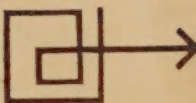


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ZONING AND HOUSING

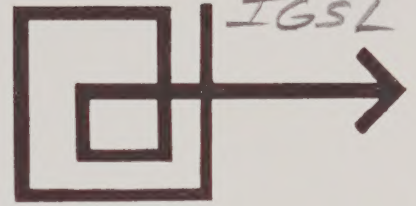


SANTA CLARA COUNTY

CENTER FOR REAL ESTATE AND URBAN ECONOMICS
Institute of Urban and Regional Development
UNIVERSITY OF CALIFORNIA
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PLANNING POLICY COMMITTEE OF SANTA CLARA COUNTY

500 ROOM 314, COUNTY ADMINISTRATION BLDG., 70 W. HEDDING ST., SAN JOSE, CA. 95110

December 1970

Because of your interest, concern and involvement in housing we are transmitting to you the enclosed report(s).

These reports are part of the continuing series issued by the Joint Cities-County Housing Element Program. They have been prepared by staff and endorsed and adopted by the Advisory Committee on Housing to the Planning Policy Committee (PPC). The reports do not necessarily represent positions, policies or programs adopted by the PPC or any member jurisdiction.

The Executive Committee of the PPC has authorized publication for public review and discussion at this time. The Planning Policy Committee will be considering materials of the Joint Housing Element Program, including recommendations therein, at its February 1971 meeting. The actions taken by the PPC will be transmitted to the member jurisdictions for their consideration.

We urge your review, commentary and assistance in helping direct our common efforts to the resolution of housing problems in Santa Clara County. Your comments can be directed to staff, local planning agencies, members of the Housing Advisory Committee, or to Planning Policy Committee representatives.

Very truly yours,

Charles Gordon

Charles Gordon, Chairman
Planning Policy Committee

W. D. Weisgerber

W. D. Weisgerber, Chairman
Advisory Committee on Housing

CG:WDW:pa



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DECEMBER, 1970

ZONING AND HOUSING

SANTA CLARA COUNTY

The Joint Cities-County Housing Element Program:

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Campbell
Cupertino
Gilroy
Los Altos
Los Altos Hills
Los Gatos
Milpitas
Monte Sereno
Morgan Hill
Mountain View
Palo Alto
San Jose
Santa Clara
Saratoga
Sunnyvale

COUNTY OF SANTA CLARA

Planning Policy Committee of Santa Clara County: Charles Gordon, Chairman

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*Summer 1970

ZONING AND HOUSING

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SUMMARY

Zoning is one of the most important governmental tools for controlling the development of urban land. It was invented as a means to prevent unwanted neighborhood change, and has been popularly embraced as a device for protecting property values. Recently, zoning has come under concerted criticism as an obstacle to low and moderate income housing and to the movement of minority households into the suburbs. As an obstacle to low and moderate cost housing, zoning may take several forms, the two most important of which are excessively large lot sizes for single family housing and restrictions on the amount and density of multi-family housing which may be developed.

Single Family Zoning

Single family residential zones establish the minimum size of lot which may be developed within a zoned area and in the process they help to establish the minimum possible cost of housing which may be built within that area. If zoning forces development to lot sizes larger than developers would otherwise choose it will effectively raise the cost of housing in that zone. Not only do larger lots cost more to purchase, but they cost more to improve, and developers are likely to build a more expensive house on high cost large lots than they would on lower cost small lots. These factors combine to make the provision of low and moderate cost single family housing unlikely on all but the smallest lots.

In Santa Clara County, developed single family lots are priced upward from \$5,500. For low and moderate income single family housing to be built in the County it is essential to have zoning allowing lots of 6,000 square feet or less. Even in the less costly areas of the County, a change from a lot size of 6,000 square feet to 7,500 or 8,000 square feet will increase

lot cost by an average of over \$1,500. Experience with 2,252 FHA insured houses built in the County in 1967 and 1968 has shown that a \$1,500 increase in lot cost will lead to a total increase of \$3,900 in house price. The minimum lot sizes established by the local zoning pattern are clearly of extreme importance for sponsors of low and moderate income housing.

In 1967 there were 120,340 acres of land zoned for single family housing by Santa Clara County and the 15 cities in the County. 38,300 of these acres were zoned for lots small enough to be conducive to low or moderate cost housing (5,000-6,000 square feet). 11,500 acres of this small-lot-zoned land were still vacant in 1967, but they were extremely limited in their geographic distribution, with 8,300 acres concentrated in five contiguous planning areas running from Milpitas to Edenvale. Seven of the cities have no zone allowing lots of less than 7,000 square feet.

At the other extreme, there are several jurisdictions with high proportions of their single family zoned land devoted to development at lot sizes of 20,000 square feet or more. Even discounting for "holding zones," it appears that about one-half of all single family zoned land still available for development will be forced by zoning into lots above 20,000 square feet in size. It is highly unlikely that any of this land will be used for low or moderate income housing.

Multi-Family Zoning

Multi-family housing is assuming increasing shares of new housing construction in the County and is of particular importance for low and moderate income families. Multi-family zoning is fairly plentiful in Santa Clara County and is reasonably well distributed in the urbanized portion of the County. In 1967, there were 11,300 acres of multi-family zoned land, about

one-third of which was unoccupied. Two cities have no multi-family zones.

Not only is there a fairly abundant amount of multi-family zoning still available for development, but the multi-family zones now existing in the County generally allow densities conducive to low and moderate cost housing development. On a Countywide basis, zoning for multi-family land does not appear to be a major problem for low and moderate income housing; it may, however, be a significant problem in some areas of the County and in specific development cases.

Other Zoning Obstacles

Two common sources of low and moderate income housing which may be influenced by zoning are old residential neighborhoods and mobile homes. In Santa Clara County there are several old residential neighborhoods near expanding commercial districts in which pressure for redevelopment has lead to significant zoning controversies. With few exceptions, mobile homes must be located in mobile home parks, and the possible location of such parks is severely limited by the zoning pattern in the County.

Sponsors of low and moderate cost housing often complain of difficulties caused through the administration of zoning. The three major problems identified by zoning administrators in the County are complaints about the time involved in zoning processing, the inflexibility of zoning restrictions, and the unwillingness of local jurisdictions to grant increased densities. A special problem area for low and moderate income housing developments may involve discretionary controls such as architectural and site reviews or planned unit developments where the administrators of the zoning ordinance can directly impose conditions which add to development cost. Planned unit

developments (PUD's) offer great potential for facilitating lower cost housing or for deterring its creation. Several jurisdictions in the County have demonstrated a willingness to accommodate lower cost developments with the planned unit development, especially for townhouse projects.

General Conclusions

The extent to which zoning acts as an obstacle to low and moderate income housing in Santa Clara County varies greatly among localities within the County. At one extreme are a few jurisdictions in which zoning prohibits small lots and apartments altogether. At the other extreme are a few jurisdictions which have shown a willingness to grant very liberal zoning so that lower cost housing can be built. Most of the jurisdictions have a mixed record.

Zoning creates two major sets of obstacles to low and moderate cost housing in Santa Clara County. The first set includes the effective denial of the possibility to develop such housing through the prohibition of small lots, apartments, and mobile homes. The second set involves marginal changes in zoned density and site development restrictions which could make the difference between housing just beyond the reach of moderate income families and housing which they could afford. But given the most liberal zoning and townhouse construction, it appears that single family owner-occupied housing below \$15,000 is unlikely without massive subsidies. As for very low income families, the best that zoning can probably accomplish is to establish standards which facilitate the provision of subsidized housing; no matter how liberal the zoning of a jurisdiction is, there are limits to what can be accomplished through zoning alone. Liberal zoning is necessary for the development of low and moderate income housing, but it is not sufficient to insure its provision.

Recommendations

In view of the decided ability of zoning to limit low and moderate income housing possibilities, a series of recommendations are proposed for adoption by the cities and the County.

A. POLICY RECOMMENDATIONS:

1. The use of zoning in ways which consciously exclude persons on the basis of racial, economic, or ethnic characteristics is unacceptable in the cities and unincorporated areas of Santa Clara County.
2. Zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all income levels in each jurisdiction, and generally in proportion to employment opportunities in each jurisdiction.

B. RECOMMENDATIONS FOR CHANGES IN ZONING & PLANNING PRACTICE:

1. At the Local Level

A. Articulation of Housing Policy

A clear set of housing policies should be formulated by each jurisdiction and the performance of zoning measured against these policies.

B. Planning for Supply and Cost of Housing

In arriving at zoning decisions, cost and supply of housing should be included in planning criteria.

C. Stated Criteria for Zoning

The specific technical and non-technical criteria used in establishing the details of zoning restrictions on development should be stated for each of the zoning classifications in the zoning ordinance.

D. Expediting Zoning Administration

Efforts should be made to expedite zoning administration both to increase the speed of zoning administration and to relieve the burden placed upon the planning commissions and elected boards.

E. Mandatory Mix in PUD's

It should be the policy of each municipality to require a mix in the type and cost of housing units in new subdivisions and apartment complexes as a prerequisite to the granting of planned unit developments.

F. Countywide Collection and Unification of Information

An on-going system for assembling and dispersing housing and zoning information for the entire County and for reasonable sub-areas of the County should be established.

2. At the State Level

A. Statement of Non-exclusion

The State planning law should be amended to include a statement that zoning shall not be used in ways which exclude persons on the basis of race, color, creed, national origin, age, or income.

B. Enforcement of Zoning Equality

The Department of Housing and Community Development (H&CD) of the State of California should be charged with the enforcement of state policies on nonexclusion in zoning.

C. Zoning and Housing Cost

State law should be amended to allow explicit consideration of housing cost and/or income of occupants in zoning matters consistent with the prohibition of exclusionary zoning practice.

D. Relationship of Zoning to the General Plan

State planning law should be amended to require that the zoning ordinance demonstrate substantial compliance to the housing element of the general plan for the city or County.

E. Land for Housing as a Basis for Zoning

State planning law should be amended to include the designation of land by cities and counties for the adequate housing of all economic groups as one of the basic purposes of zoning.

F. State Model Land Use Control Ordinance

The State should establish a broadly based commission to review established zoning practices for the purpose of creating a model land use control ordinance for use by local governments in the State of California.

G. Consideration of Extra-Territorial Effects

State planning law should be amended so that jurisdictions exercising the power to zone must consider the extra-territorial effects of the zoning restrictions which they impose.

3. At the Federal Level

A. Mix Policy in Federally Aided Housing

There should be an aggressive policy promoting economic mix in federally insured and federally assisted housing.

B. Grants in Aid for Land Rights and Acquisition

The federal government should initiate a program of grants in aid to assist local governments in the acquisition of land development rights through compensatory development controls and for assistance in the establishment of land banks for low and moderate cost housing.

C. Enforcement of Zoning Equality

The Department of Housing and Urban Development should assume responsibility for enforcing equality of treatment under zoning where federal programs are involved.

C. RECOMMENDATIONS TO COUNTER EXCLUSIONARY TENDENCIES IN ZONING

1. Tax Relief for Local Government

Property taxes should be reduced and the burden for municipal and school support shifted to non-housing related sources.

2. Reducing Emphasis on Neighborhood Homogeneity

A. Neighborhood Mix in Local Planning

Local jurisdictions should consciously designate a variety of zoned areas so that economic mix will be fostered both between adjoining subdivisions and apartment complexes and within each subdivision and apartment complex.

B. Relationship of Schools to Housing Development

The concept of the neighborhood school should be reexamined in terms of its influence in reinforcing or sustaining segregated housing patterns.

INTRODUCTION

Santa Clara County is one of the most affluent areas of California, yet it has proven incapable of providing enough decent housing at prices suitable to all its inhabitants. Families earning below \$12,000 per year no longer have an adequate chance for home ownership, and the apartment market is only adequate to serve those families earning \$5,700 or more per year. The greatest need at this time is for houses selling for less than \$24,000 and for apartments renting for less than \$120 per month.

There are many difficulties to be overcome in producing the amount of low and moderate cost housing needed in Santa Clara County. Many of the fundamental changes that must be effectuated involve national economic and political circumstances beyond the power of County residents to control, but other factors that are within the sphere of local influence are also of great importance. The most direct control that local jurisdictions have over the type and price of housing is the regulation of land use and land improvements through zoning, subdivision controls and building codes.

Secretary of Housing and Urban Development George Romney has referred to zoning as one of the principal obstacles to be overcome if we are to see a real breakthrough in housing. The National Association for the Advancement of Colored People, the National Committee Against Discrimination in Housing and other groups have strongly condemned zoning's use to exclude minority and low income people from some communities, and the nation's courts are seeing a new wave of cases which challenge the legitimacy of zoning in situations involving economic class. In view of the growing awareness of the potential of zoning to frustrate the provision of low and moderate cost housing, it is appropriate to reevaluate the role that zoning plays in the housing situation of Santa Clara County.

CHAPTER I

THE TRADITIONS AND DEVELOPMENT OF AMERICAN ZONING

Zoning is one of the primary tools of local governments for controlling urban development. As usually applied, zoning is the division of the land area of a city or county into districts or "zones" and the establishment of regulations controlling the use of land in each zone. These controls affect 1) the permissible uses of buildings and land for commerce, industry, residences or other purposes; 2) the height and bulk of structures; 3) the proportion of land area which may be built upon and which must be left in open spaces; and 4) the density of use that is permitted. In all these controls, zoning is permissive only; it can restrict what is developed by private persons but cannot dictate what will be built.

From the point of view of the city planner, zoning provides one means by which the growth of urban areas may be given orderly, rational form. From the viewpoint of the landowner, zoning has helped to create neighborhood stability and to preserve property values. It is a widely accepted, generally popular device, but in recent years it has come under attack from a growing number of critics. To many people, zoning has become synonymous with the regulation of a sterile homogeneity for new developments, with the exclusion of minority and poor families from entire urban neighborhoods and with an artificially enforced status quo in established middle and upper class neighborhoods.

The practice of establishing discrete zones of land use types is a uniquely American solution to the problems which came about with the development of urban land. The concept has spread to much of the rest of the world during this century, but the form it has taken can best be understood through the perspective of our historic traditions.

HISTORICAL DEVELOPMENT

Our attitudes toward land can be traced back to the English system of Common Law and even to feudal traditions, which put property above almost all other considerations in the determination of the quality of men's lives. The attitude that "a man's home is his castle" has been firmly ingrained into our attitudes about our homes and our lands. The settlers of our nation came from this land-oriented culture, and the abundant cheap land of America itself provided the other key element in shaping our own unique national land attitudes. In fact, the lure of the frontier with its vast land resources virtually free from public control or restriction was both the stage and the impetus for much of our history through the 19th Century. Our philosophical, political, and legal traditions have grown out of this era of laissez faire development in which the only control was the "invisible hand" of the market economy.

The late 1800's brought a period of reform to many aspects of American life. Several of the reform movements had a direct effect upon the development of zoning. In 1867 New York enacted its first tenement law, establishing certain minimum standards for the protection of public health. In 1901 New York established a maximum lot coverage of 65 percent for some residential uses; and the cities of Chicago, Boston and Cleveland soon adopted similar ordinances. Boston enacted controls on building height in 1903, and the U.S. Supreme Court upheld the concept. Many cities adopted fire district ordinances banning wooden structures from designated areas. By the turn of the century, it had become accepted that the public had the right to impose controls on the use of private land when the use of that land affected the public health, safety, and welfare.

At the same time, there was a growing desire to bring amenity and beauty

into the city, especially through the park movement and a number of major exhibitions, including San Francisco's Panama-Pacific International Exhibition of 1915, and the famous 1893 Columbian Exhibition of Chicago, which stimulated an entire era of monumental civic designs in what has been labeled "the City Beautiful Movement." Modern city planning is usually considered an outgrowth of this period.

These two developments, the establishment of the city's right to control undesirable uses of land and the "city beautiful" ideal, provided the framework for the emergence of zoning. The third factor which was needed to actually develop the idea was the formation of a group of property owners anxious to prevent unwanted change in their neighborhood. In 1907 such a group emerged among the merchants of New York's Fifth Avenue, who joined forces with advocates of city planning to establish the Advisory Commission on Height and Arrangement of Buildings. This commission drafted a zoning resolution which established the basic pattern for American zoning. The desire to prevent unwanted change has remained as one of the central motivations of zoning.

In the years following New York's adoption of zoning in 1916, the idea of zoning spread rapidly across the country and was tested in the courts. The legitimacy of zoning was clearly established in a 1926 decision of the United States Supreme Court in the case of *Village of Euclid vs. Ambler Realty Company*. By 1930, the legal power to zone was established in every state of the Union.

Since the 1930's, zoning has been one of the primary tools available to city planning agencies, and volumes have been written about the proper relation of zoning to the urban planning process. Under California State law a comprehensive plan is not required as a prerequisite to the practice of

zoning. But current canons of practice call for an overall comprehensive plan which establishes the broad growth policies of the jurisdiction and gives guidance to the actual laying out of land use types by geographic area. The zoning map is developed using the comprehensive plan as its basic guide, but giving far greater specific detail and carrying the force of law.

Zoning, then, is largely a reflection of the stated and implied policies expressed in the comprehensive plan. To the extent that there are clear policies which influence land use in the plan, the zoning map of the jurisdiction should reflect those policies. Unfortunately, most comprehensive plans have not come directly to grips with forming housing policy. They have based the distribution of residential land uses on the provision of commercial land, on the transportation network, on physical characteristics of soil and topography, on some vaguely defined notion of a desired "residential quality" or "proper residential environment," and often on textbook concepts of the "neighborhood." The net effect of the criteria generally used in land use decisions is to form a set of operating conditions for housing development without directly considering the housing needs, conditions, and desires of the community. Given the indirect nature of the comprehensive plan's involvement with housing, it is not surprising that land use controls have been used in ways which are open to criticism. The requirement of the 1968 Housing and Urban Development Act for a "housing element" as part of the comprehensive plan is a recognition of the traditional oversight of local plans.

In moving from the concept of laissez faire development to the national requirement for a housing element in a comprehensive plan, we have moved

a considerable distance from the early notions of private property rights. Zoning is certainly an infringement upon the tradition of property rights established in the early days of the country, but it is important to realize that it is only an infringement and not a new departure. The greatest selling point of zoning was and is its ability to protect existing land values by keeping undesirable land uses out; if it were not for this aspect of protection, it is unlikely that zoning would have gained acceptance. Land is still considered a personal commodity which is held, used and exchanged by private individuals seeking fulfillment of private objectives. The rights of private people to use their land as they see fit is limited by zoning only to the extent that is necessary for the protection of health, safety, morals, and the public welfare. The determination of these limits has been left to the nation's courts.

THE LEGAL NATURE OF ZONING

Zoning is an exercise of the police power. The right to use the police power to determine land use is given from the state to the local jurisdiction through state enabling legislation; such legislation establishes the substantive matters and procedural steps to be included in local zoning actions. Within the framework of state legislation, the local governmental unit has the power to pass ordinances affecting the public health, safety, morals, and general welfare. To be enforceable, a zoning ordinance must show a reasonable relationship to these criteria of health, safety, morals, and the general welfare.

In establishing zones of land use type, the courts have ruled that the regulations governing each specific zone classification must be uniformly applied to all areas given that zone classification. The courts have also insisted that there be a reasonable basis for the establishment of a particular zone in a particular area and that the imposition of the zone not work undue hardships on individual properties within the zone. These conditions have served as the guideline for the legitimate application of zoning as defined by the courts.

One important group of court rulings involves zoning's use in relation to low income and minority people. Judicial opinion has tended to agree that zoning's application is appropriate to determine the types of uses to which land is put but not the groups of people who may use the land.

Many of the early zoning ordinances tried to regulate racial residential patterns. Such overtly discriminatory uses of zoning were quickly overturned, but not always on the grounds of racial equality. The landmark case on racial zoning was *Buchanan vs. Warley*, heard before the U.S. Supreme Court in 1917. It is a highly revealing comment on the position of property

rights in our legal system that the case was decided not on the denial of civil rights to the Black litigant but on the grounds that racial zoning represented an unconstitutional infringement on the right of property sellers to choose their purchasers.¹

Similar to the racial zones were attempts to zone by economic class. The most direct attempts at economic class zoning were to set minimum cost requirements for housing built in certain exclusive zones. This direct regulation of economic class through housing cost was quickly ruled unconstitutional by the courts, but numerous devices with greater subtlety have arisen which have the same ends of determining economic class through the use of zoning. Since minority groups tend to have relatively low incomes, economically biased zoning may also have racial and ethnic implications. Zoning practices which influence racial, ethnic and economic characteristics through the cost of housing have come under heavy criticism and are being tested in the nation's courts.

The courts, however, have been reluctant to rule against long established zoning practices. One of the major difficulties in determining the legality of zoning which influences housing cost has been the refusal of the U.S. Supreme Court to hear a zoning case since the 1930's. Opinion from lower courts has not yet formed a sufficient body of precedent to clearly guide zoning practice. Some of the reasons for the slowness of the courts to respond to challenges to zoning were summarized by the Douglas Commission:

First, property law is among the most venerable branches of the common law, and traditional notions about how to approach cases involving such rights have shown considerable staying power.

Second, the nature and importance of these issues has only recently begun to emerge. Third, the Supreme Court has

refused to hear any zoning case since Nectow vs. City of Cambridge,

decided 40 years ago. Lower courts, lacking the leadership to see these cases in a broader perspective, often refuse to venture forth. Fourth, courts are reluctant to consider the motivations of public officials in arriving at particular decisions. This becomes especially important in the case of administrative practices aimed at exclusion. Fifth, the factual information needed to show significance of exclusionary practices simply does not exist in most areas, and the cost to a private litigant of obtaining it would prove prohibitive.²

THE LIMITATIONS OF ZONING

Much of the material presented in the following chapters will portray zoning in the light of its rather powerful influence on the provision of low cost housing. It has already been stated that zoning is one of the strongest tools available to planners in controlling the development of their communities, but it is important to realize that it is an exceedingly blunt tool in many respects.

The fundamental limitation of zoning is the negative nature of its power. Zoning can prohibit undesired developments, can use the threat of prohibition in some cases to effectuate changes in the details of a proposed development, but cannot necessarily bring about desired developments through its imposition. In establishing zones of land use, all a municipality is actually doing is deciding what types of land use will not be found in each zone. The simple act of zoning by itself cannot bring about development and cannot guarantee that what is developed will be up to the expectations of the planners. This can be demonstrated by the great amounts of undeveloped industrially zoned land found in many of the nation's cities. Zoning provides a framework for growth but the city or county must 'wait and see' what actually develops.

The negative type of control offered by zoning, the need for uniformity of regulation in similar zones of the jurisdiction, and the largely self-executing nature of zoning administration all point to the fact that zoning is most effective in preventing change rather than in guiding it. The ability to say "no" lends itself exceptionally well to maintaining the status quo. But as a tool for guiding growth, zoning is extremely crude. The need for uniformity of control within similar zones and the need to demonstrate reasonableness in applying any particular zone to a particular area have made

zoning gross and monotonizing as a tool for shaping growth. The need for uniformity stems in part from the fact that zoning cannot make compensation for any restrictions or competitive disadvantages which it imposes on individual pieces of property.

In terms of housing, then, zoning is greatly limited in the actions it can take to directly create low cost housing. The establishment of densities and site specifications designed to encourage low cost housing will not necessarily lead to the creation of such housing. Even with standards aimed at the low cost housing market, builders are free to build expensive units or to not build at all if they so desire. On the other hand, zoning can be used in ways which will directly discourage the provision of low cost housing. It is in the negative nature of zoning itself that it can be used effectively as an obstacle to providing housing but not as a catalyst to providing low cost housing.

CHAPTER II

ZONING AS AN OBSTACLE TO LOW AND MODERATE INCOME HOUSING

The Joint Cities-County Housing Element report The Housing Situation: 1969 documented that the local market for owner-occupied single family housing was only adequate to meet the needs of families earning \$12,000 or more per year and that the rental market was only adequate to meet the needs of households earning at least \$5,700 per year. This corresponds to a purchase price of \$24,000 for a single family house and a monthly rent of \$120 for apartments. The principal concerns of this investigation are the extent to which zoning may contribute to our apparent inability to provide home owner opportunities to low and moderate income families and the extent to which zoning may frustrate the ability of the rental housing market to adequately serve a larger segment of the low and moderate income population.

The primary limitation of zoning has been identified as its negative nature. It follows that most of zoning's influences over housing for low and moderate income families are in the form of obstacles rather than incentives. Zoning can exclude specific land uses by dictate but cannot assure their inclusion by sanction. Obstacles to low cost housing take the form of flat rejection of specific housing types, administrative delays in zoning decisions, and especially factors which increase the cost of housing production.

The idea that zoning influences cost or value of residential property is by no means new. The preservation or establishment of desired property values has been one of the principal functions of zoning since its earliest days. Zoning acts upon the price of land itself as well as upon the cost of improvements upon the land. The effect which zoning has on costs varies greatly from case to case, and is only one of a number of interrelated determinants of cost for any given housing development. Other influences on the cost of land include the amount of land available, the demand for land, the specific

attributes of the site with respect to location, accessibility, scenic value, neighboring land uses, soil conditions, topography, the availability of urban services, and so on. The cost of improvements is influenced by the costs of labor, materials, building technology used, site conditions, costs of financing, and other factors, in addition to the type of zoning.

The most obvious of zoning's influences on housing costs are its controls over the types and the intensity of land uses permitted within each zone. By controlling the intensity of development through minimum lot sizes and maximum densities of use, zoning helps establish the effective supply of residential land, the types of housing most feasible for development, and other factors associated with residential cost. By controlling the overall supply of land for residential and other uses, zoning takes a direct part in the equation determining the market value of land for all land use categories in the jurisdiction.

The zoning obstacles to low and moderate cost housing include large minimum lot sizes, the restriction of multi-family housing, problems in old residential zones, the exclusion of mobile homes, and obstacles of zoning administration. They may all find expression in what has been termed "fiscal zoning," and have been labeled as "exclusionary zoning" practices by their critics.

LARGE MINIMUM LOT SIZES

Residential zones invariably establish the minimum size of lot which may be developed. In establishing the developable lot size, zoning helps to establish the price of land. The relation between lot size and lot value is neither direct nor constant, and is particularly sensitive to other controlling factors of site and situation. Holding all other considerations constant, it is normal to expect that the price of land will increase with the size of the parcel but at a slower rate than the increase in size. Given equally desirable sites, a 5,000 square foot lot is worth less than a 10,000 square foot lot, but the 10,000 square foot lot will not necessarily be worth twice as much. The rate at which total lot cost increases is largely a function of the total demand for land. In rural areas with weak land markets, an increase in lot size may have little or no effect on price. But in strong land markets, especially in metropolitan areas, the increase in lot price with increased lot size may be substantial.

In equally desirable areas, then, it seems reasonable to assume that the larger the lot size required by the zoning ordinance the greater the land cost and consequently, the cost of housing. Local governments which establish extensive zoned areas for lots larger than normal city lot size are said to be practicing "large lot zoning."

In addition to the general relationship of size to cost, there are special conditions involving large lots which may further add to land costs. The first is the effect of large lot zoning on the total housing supply, and the second is the market value of exclusiveness itself.

Extensive large lot zoning in a given area acts to directly restrict the total amount of housing that can be located in the area. If demand for housing is strong, the restriction on the housing supply can lead to a gen-

eral and substantial increase in residential land costs. Perhaps more important is the market value of an address in an exclusive neighborhood. The use of large lot zoning can help assure that the residents of an area are in the upper income brackets, and the fact that an area has such high income people may itself produce a "snob appeal" that reinforces high land prices in a spiraling fashion. This "snob appeal" cannot, of course, be brought about entirely through zoning; there are usually intrinsically desirable attributes such as views, woodlands, or a rural setting adding to the character of the areas which become exclusive.

Once areas are established as prestige neighborhoods, they are likely to have such high land values that low cost housing would be unlikely regardless of the zoning pattern. But in areas lacking a well established reputation for exclusive residences, the fact of large lot zoning may be a major contributor to land values and perceived status.

Many of the cost influences of large lot zoning involve the costs to actually develop the land. These costs fall into two categories: 1) the cost of preparing the land for the house; and 2) the cost of the house itself.

The costs to prepare the site for the house include such things as streets, curbs, sewers, electricity, gas, water, grading, and so forth. It is usually fair to assume that such improvements will cost more on a larger lot than on a smaller lot simply because more will be required. Since many of these items are linear quantities, the increase in cost with increasing lot size depends most strongly upon the lot frontage. These costs appear to mount rapidly up to a certain lot size at which increments in lot area begin to increase development costs at a diminishing rate. The Kaiser report makes the observation that "because frontage is so important, and because larger lots do not require the same proportion of site improvement, increases in lot sizes, especially at

the higher levels, actually cause surprisingly little increase in total lot costs."³ At just what point this change takes place is not clear and will certainly vary greatly with each situation, but it seems fair to assume that except for very large lots there is a decided increase in improvement costs as lot size increases.

The most direct influence over the cost of the house itself is the use of zoning to establish minimum floor areas as part of the zoning ordinance. This practice has generally been frowned upon by the courts. A much less direct but often important concomitant to large lot zoning was outlined in the Douglas Commission Report:

Some builders will simply not build the same house on a large lot that they will on a smaller lot, believing that a larger house is necessary. Furthermore, many builders observe a rule of thumb that the price of a lot should be some specified percentage of the total price of house and lot; e.g., 20 percent. If such a rule is strictly observed, a \$1,000 increase in lot cost will result in a \$5,000 increase in the price of the finished house and lot.⁴

There are a number of factors which may be involved in the decision to employ large lot zoning; among the most significant are a desire for prestige, a desire to limit municipal services, physical constraints, a desire to hold land out of development, and a desire to provide individual space and privacy.

There seems little reason to doubt the importance of status and prestige in our culture, and there is little reason to doubt that one of the underlying reasons for large lot zoning is the creation of an exclusive neighborhood character.⁵

Of a less subjective nature are decisions to limit the costs of municipal services by creating densities low enough to permit the use of septic tanks and fresh water wells. With large lots the need for public open spaces is reduced; and with low population sizes the need for investment in school facilities may be reduced. The courts have generally agreed to this type of large lot zoning provided that the densities established bear some reasonable relation to the physical ability of the land to support septic tank and water needs.

Many areas have unique physical characteristics which make the development of land undesirable at high densities. Reasons of soil stability, slope, drainage, and so forth, may dictate the use of large minimum lot sizes. The courts have looked upon such applications of large lot zoning as reasonable and necessary.

The use of large lot zoning as a means of withholding land from residential subdivisions until officials deem it ready for development has been questionable both in the view of the courts and as a realistic strategy for land use development.

Perhaps the most prevalent reason given for the use of large lot zoning is the preservation of a semi-rural environment for those who prefer open space and privacy and can afford the cost associated with large suburban parcels of land. The courts have taken various stands on such zones depending upon the individual circumstances. The key legal question is the degree to which the police power can be employed to satisfy personal desires. In a 1965 case before the Pennsylvania Supreme Court, National Land and Investment vs. Kohn, involving an area zoned in large lots to protect a "rural setting," the court ruled:

There is no doubt that many of the residents of this area are highly desirous of keeping it the way it is, preferring,

quite naturally, to look out upon land in its natural state rather than on other homes. These desires, however, do not rise to the level of public welfare. This is purely a matter of private desire which zoning regulations may not be employed to effectuate.⁶

In the same case, the Pennsylvania Court gave an opinion with implications for the use of large lot zoning in general: "A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid."⁷

Large lot zoning, then, is used for a number of reasons which may or may not take low cost housing into direct consideration. The appropriateness of such zoning is a legal and political issue, depending entirely upon the particular situation involved, and is not at issue here. It is, however, important to recognize that large lot zoning can have a negative effect upon the provision of low and moderate cost housing. To the extent that such zoning does exclude the poor, the working class, and the minorities from suburban areas, it can be viewed as a questionable use of the police power. Since proportionately fewer minority peoples can afford homes in areas with restrictively large lot sizes, large lot zoning has become a symbol of white racism to organizations like the NAACP. Secretary Romney of HUD has stated that large lot zoning and other exclusionary zoning practices "foster and perpetuate artificially isolated enclaves, distort the natural and needed balanced development of metropolitan areas, and prevent the efficient and effective use of land." When the economic and ethnic composition of most suburban areas is considered, it becomes extremely difficult to ignore the association of large lots with the white middle and upper class.

RESTRICTIONS ON MULTI-FAMILY HOUSING

Multi-family housing has assumed increasing shares of new housing construction in much of the nation, and is of primary importance for families with low and moderate incomes. But many localities have adopted policies which limit development of multi-family units. In suburban areas, apartments are sometimes considered out of character with the semi-rural environment. Apartment dwellers may be stereotyped as transients who will harm neighborhood stability or who will not develop the same sense of neighborhood pride as residents of single family houses. There is often a fear that apartments do not contribute proportionately to the tax base while the higher densities may overtax municipal facilities. There may be fear that the apartment dwellers will not be the social or economic equals of neighboring home owning residents. Many of the government programs of housing assistance involve apartments, and some municipalities may fear that apartment zones will lead to an influx of subsidized types of dwellings. Finally, there are many who feel that apartments in their neighborhoods will lower property values. The effect of these attitudes has been to ban apartments entirely from some jurisdictions and to greatly restrict the amount of land available for multi-family densities in others. Such exclusion of multifamily units must be considered one of the greatest single obstacles to the provision of low cost housing.

In jurisdictions which choose to limit construction of apartments but not ban them entirely, low cost housing may be curtailed in several ways:

1. If the supply of multi-family land is artificially restricted through zoning and the demand for such land is strong, then the price of multi-family land may be kept at an inflated level. In addition developers often complain that the price of apartment land is forced up in this way to the point where they consider that development of land zoned for multi-

family housing is economically unfeasible.

2. In some jurisdictions, the problem is not only one of total acreage zoned for apartments, but the densities allowed in the multi-family zones themselves. Generally, as the number of units allowed per acre of land is increased, the cost per unit decreases. If there were no countervailing forces offsetting this rule, the per unit cost of providing multi-family housing could be decreased by increasing apartment density. But after a density of about 20 or 22 units per acre is achieved, the nature of construction and on-site improvements required change so that economies gained in terms of land cost per unit are offset by increased cost per unit of construction. Densities above 20-22 units per acre generally require more costly construction, underground parking, and extra amenities, all of which tend to place higher density apartment complexes in the luxury class. Up to about 20 units per acre, however, there are decided cost per unit advantages to be gained by increasing density, and these cost advantages could be passed on to the housing consumer.
3. Local governments may choose to allow apartment densities but exclude low cost units through the establishment of high standards for amenity and on-site improvement. Such standards can be incorporated into the zoning practices of the jurisdiction both in the zoning code itself and in the administration of the code.

Many of the legal actions taken in recent years by groups wishing to reverse

exclusionary zoning have dealt with limitations on apartments. The clearest cases have involved municipalities that ban multiple densities entirely. One of the most significant recent cases was the Appeal of Joseph Girsch from the Decision of the Board of Adjustment of Nether Providence Township in Pennsylvania. In a 1969 decision, the Pennsylvania Supreme Court ruled that in barring apartments, "the town has simply made a decision that it is content with things the way they are, and that the expense or change in character that would result from people moving in to find a comfortable place to live are for someone else to worry about. That decision is unacceptable." The Court declared that the town "must provide apartments in its plan for future growth; it cannot be allowed to close its doors to others seeking a comfortable place to live."⁸

ZONING PROBLEMS IN OLD RESIDENTIAL AREAS

The zoning obstacles to low and moderate cost housing are not limited to considerations of new housing production. Zoning may have substantial impact upon already developed areas. Among the primary uses of zoning have been the protection of the physical character of existing neighborhoods, the protection of property values and the maintenance of neighborhood stability. Changes of zone within developed areas may constitute real or imagined threats to property values and to the stability of an area.

One situation which commonly threatens old residential neighborhoods is the use of zoning to facilitate a change in neighborhood character either to higher density residential uses or to commercial uses. Residential areas surrounding expanding commercial cores are especially vulnerable to redevelopment for higher rent uses, and zoning may play a part in determining the timing of such redevelopment. A refusal to grant zone changes allowing higher intensity uses may forestall redevelopment, while a policy of granting such rezones may accelerate the elimination of old residential structures. The issue is of particular importance when redevelopment around commercial cores involves neighborhoods providing shelter to elderly residents in need of both low cost housing and proximity to commercial facilities.

The subject of redevelopment embraces much more than zoning, and it would be a mistake to identify zoning as a prime mover in the process. But zoning may influence property values and tax assessments in such a way that owners of residential properties find it difficult to continue using the land as they have used it in the past.

EXCLUSION OF MOBILE HOMES

Mobile homes are becoming primary sources of housing for increasing numbers of people and offer one of the most readily available forms of lower cost housing. Almost without exception, they have been treated by local governments as an intrinsically inferior form of land use and have not had a part in the overall planning thought of most municipalities. Typically, mobile homes are restricted to mobile home parks and are limited to land in marginal industrial areas. The relative merits of mobile homes will not be debated here; but it can be observed that the treatment which they have been given through zoning and other land use controls has helped create many of the characteristics found to be objectionable by the opponents of mobile homes. It is reasonable to conclude that zoning has generally been used to exclude or severely restrict mobile home development and that such actions have acted to limit the number of low cost housing units available.

Nationally, mobile homes increased their percentage of the total new housing market from 7 percent in 1960 to an estimated 22-24 percent in 1970. One-third of the single-family homes produced in 1969 were mobile homes. It is estimated that there are now 7 million persons living in mobile units. Average prices range around \$6,000 for a unit 12 feet wide and up to 60 feet long, including furnishings. A double mobile home with two 12 foot by 60 foot units fitted together would sell for \$8,000 and up. This home would average 1,370 square feet, or as much as a fair size, single-family home and larger than most apartments.

While the purchase price of a mobile home unit is low compared to conventional housing, the monthly costs may be relatively larger. The short amortization period requires proportionately larger payments than conventional housing. In addition, pad rental, incidental fees, and monthly dues for maintenance and use of recreational facilities require monthly out-of-pocket housing costs that

approach those of conventional housing.

One of the complaints leveled against mobile home parks is the lack of uniform controls and regulations. There appears to be a wide range of requirements which vary from park to park. Examples of these are a minimum age requirement for mobile homes and ownership of a brand name unit handled by the park.

A further argument against mobile home parks are present state taxation policies. The state has established a \$12 per unit license fee which is not returned to local jurisdictions. The state also collects an in lieu tax based on 2% of the cash value of a depreciation schedule of 85% as soon as registered, 45% by the 4th year, 25% by the 8th year, down to 15% by the 18th year, where it remains. The in lieu tax, less a state service charge, is returned to the county for distribution to the county school district and city where sited. However, mobile homes do not pay any special district taxes, nor taxes for special issues for schools, hospitals, and the like. They are not subject to overrides for school purposes. No taxes are paid on mobile unit add ons, such as patios, garages, storage units and porches.

OBSTACLES OF ZONING ADMINISTRATION

Zoning is largely self-executing. The municipality establishes land development rules for each zoning classification and determines the geographic areas included in each zone. Once established, the administration of zoning is basically an automatic procedure of comparing proposed developments to the rules established for the zone. There are, however, a number of situations calling for administrative discretion in which the planning staff, planning commission, and the governing board of the jurisdiction can exercise considerable control over the type, quality, and price of whatever is developed. This discretionary power comes into play in application for rezoning of property, for variances, use permits, architectural and site approval, and for "planned unit" types of developments. These devices requiring an administrative decision are of particular importance to low and moderate cost housing since such housing often requires special zoning consideration.

Rezoning is a process by which land zoned for one use category may be changed to another category of use. It is of great importance to the provision of low and moderate cost housing, especially multi-family and rowhouse developments. Commonly, jurisdictions have too little land zoned for high density development and the land that is zoned for multi-family use is overly expensive. Consequently, developers of low cost housing often find it necessary to take an option on land zoned for single family use and apply for a multi-family zone which will permit single family attached houses (townhouses), condominiums, or apartment complexes.

In considering such changes from the existing zoning pattern, the municipalities are confronted by complex sets of factors. On one hand, they must decide on the reasonableness and equity of the proposed change in the zoning. On the other hand, they must consider the integrity of the comprehensive plan and the possibilities of speculative pressures. Often the most pressing

considerations come from the residents of the areas to be affected and from public demonstrations of concern over zoning decisions. For a variety of reasons, planning commissions and city councils are often under great pressure to discourage low cost housing projects, and such pressure may find expression in the form of administrative obstacles to such housing.

The most direct method of discouraging low cost housing is simply to refuse to grant rezones, variances, and use permits which would lead to the creation of such housing. Sponsors of low cost housing often complain that cities use their ability to refuse the rezone or variance as a bargaining tool to force changes in densities, on-site improvements, architectural details, or other aspects of the project which would make the realization of the project financially infeasible for occupation by low or moderate income people. The motivations of city councils with reputations for refusing to alter zoning in cases involving low cost housing are varied and may not reflect an overt rejection of low cost housing per se. A desire for "high quality standards" for all development, the importance of "compatibility" with existing neighborhoods, the burden on public facilities, and other factors may be identified as the primary objectives. Implied in these objectives may be the belief that low cost homes are not of the right "quality"; that low income people are not compatible; and that low cost housing will be a burden. Many low cost and subsidized housing projects are killed by the actions of municipalities in zoning hearings.

The Planned Unit Development (PUD) is a device giving great discretion to the municipality either to relax or tighten restrictions on land use. The names given to this device depend on the jurisdiction involved, and may include cluster development, planned development, planned community,

or any of several dozen titles. Unlike other types of zones, the planned unit development zone is not assigned to specific land areas. At the request of the developers, it can supersede the existing zoning and subdivision regulations and give the power to dictate development standards directly to the city council. PUD's may allow a mixture of land use types and densities, and should free developers from the rigid site standards of conventional zoning. From the developer's point of view, the PUD offers freedom from many limitations imposed by traditional zoning and can lead to both savings and better project design. From the viewpoint of the municipality, the PUD offers a unique opportunity to control exactly what gets built on the land. Because of the special problems facing developers of low cost housing, a high proportion find that they must either try their luck under PUD or not at all. Depending upon the practices of the municipality, the PUD can be used to greatly further or limit the provision of low cost housing.

Reviewing the use of administrative practices to exclude low and moderate income people, the Douglas Commission reported that under rezoning and planned unit types of development, the local officials:

"have an opportunity to determine the intentions of each developer with some precision. How many bedrooms will the units in this apartment contain? To whom does he plan to rent or sell? 'Unfavorable' answers in terms of the fiscal and social objectives of such officials do not necessarily mean that permission will be denied outright. They may, however, mean long delays, attempts to impose requirements concerning dedications of land, and provision of facilities over and above those which are properly required under the subdivision ordinance, and the like."⁹

FISCAL ZONING

Each of the forms of zoning obstacles to low and moderate cost housing may be employed in the practice of "fiscal zoning." Fiscal zoning is the use of zoning to build a favorable local property tax base. If a municipality is run on a purely businesslike basis, it may try to avoid those land uses that are believed to increase costs and try to encourage those that bring high tax revenues. The Douglas Commission Report stated that the ways land is used within municipal borders is "not merely a question of esthetic and social sensitivity, it is a matter of governmental solvency."¹⁰ Zoning has proven an effective weapon in the fight for a favorable balance of tax base and budget demands.

The normal practice of fiscal zoning is to provide abundant land for industry and commerce, to allow the establishment of housing for affluent families, and to attempt to exclude low and moderate cost housing. The underlying assumption is that industry, commerce and luxury housing will add to tax revenues while low and moderate income people will add to the municipal burden. The conscious exclusion of low income people is a refinement not directly envisioned by all municipalities using zoning as a tool for fiscal policy; some may view this policy from the perspective of encouraging commerce and industry. But the creation of a surplus of industrial and commercial land at the cost of reducing the amount of land otherwise available for housing may result in serious price disturbances in residential land and may effectively stand in the way of housing production.

In addition to the price disturbances created, fiscal zoning is usually considered detrimental to the economic and social health of a metropolitan area. By draining off the cream of the tax base to cities with affluent residents, successful fiscal zoning may leave other jurisdictions with

concentrations of low income inhabitants in untenable financial positions, and the implied segregation of the affluent from the lower income may be seen to have many disturbing social consequences. In terms of the provision of low cost housing, the effects of fiscal zoning are felt throughout the urban area. By definition, the fiscally zoned municipalities discourage low cost housing in favor of industry or other tax yielding land uses, but the effects of their actions are not limited to their boundaries. Other municipalities with less restrictive development practices may find that they must either assume a disproportionate share of the low cost housing stock or adopt similarly restrictive measures as a defense against economic/ethnic ghettoization and possibly fiscal ruin. Low cost housing may simply be caught in the middle.

EXCLUSIONARY ZONING

Under the right circumstances, each of the zoning practices referred to as "obstacles" to low and moderate cost housing may be sufficient to bar such housing from a jurisdiction. The term "exclusionary zoning" has been coined to describe all zoning practices which deliberately or unintentionally have the effect of preventing low income and minority people from residing in a given city. Each of the zoning obstacles has legitimate uses which may be unrelated to housing and each may be used to effectuate some municipal objective which is in conflict with providing low cost housing but which is given priority by the community. Each may also be used with the deliberate aim of excluding low and moderate income people. In addition to the fiscal motivations for exclusionary zoning are motivations related to community stability and various conceptions of community quality.

Concerns About Community Stability

In older urban neighborhoods it is commonly feared that offering low cost housing may lead to an influx of low-income people and possibly to the establishment of an economic or ethnic ghetto. The concept of neighborhood homogeneity is so well entrenched in public attitudes that the prospect of creating an economic mix is viewed as a threat to the established order. Open class prejudice is one aspect, but other factors are also involved. Middle class residents often see low cost housing as a threat to their own property values. Another commonly expressed fear is that the transportation network will be overtaxed if the kind of density needed for some low cost housing is permitted. The degree to which these fears do or do not reflect prejudice is not at issue here: the significant fact is that such attitudes do find expression in zoning patterns.

Conceptions of Community Quality

The issue of community quality is an extremely difficult and controversial one affecting both developed and growing areas. It is not uncommon for suburban jurisdictions to cater to a limited spectrum of incomes and to make a conscious effort to provide the type of residential environment which they believe appropriate for the economic group represented in their community. Unless low and moderate income people are included in the municipality's concepts about "environmental quality", zoning standards may be made too restrictive to allow the development of low cost housing. Such zoning can be viewed as a disavowal by the municipality of responsibility to economic groups not identified as part of their community. Court challenges to this type of zoning practice have been based not on whether or not the jurisdictions involved have the right to seek residential quality, but rather on the denial by such jurisdictions of the right of lower income people to seek a place to live. The apparent conflict between quality and standards allowing low-moderate cost housing is largely based on the association of "quality" with low density, homogeneous neighborhoods.

The irony of exclusionary zoning is that by denying the possibility of decent housing to increasing proportions of the population, the cities and counties engaged in such zoning practices are forcing the provision of low cost housing to higher levels of government and in the process there is danger that local control of land use itself may be lost. The states of Massachusetts and New Jersey have already adopted laws which give the states the right to pre-empt local zoning where it stands in the way of low cost housing proposals. The Nixon Administration introduced legislation in Congress that would bar the use of zoning to prevent federally subsidized housing in developing areas, and the trend toward pre-emption

of local zoning powers will probably continue unless the nation's cities adopt development standards which will allow substantially more lower cost housing to be constructed.

CHAPTER III

ZONING AND HOUSING IN SANTA CLARA COUNTY

A potential conflict exists in Santa Clara County between traditional zoning practices and the housing needs of low and moderate income people. In mid-1969, the Joint Cities-County Housing Element Program estimated that there was an immediate need in the County for an additional 6,800 single family houses for sale at less than \$24,000; for 2,100 houses renting for less than \$120 per month; and for 5,000 multifamily units for rent at less than \$120 per month. Attempts to satisfy this need for more low-moderate priced housing are set against a background of development controls designed to insure a high level of residential quality and often resulting in high levels of expense. Increased production of lower cost housing and the protection of the public welfare through zoning are not necessarily irreconcilable, but neither are they made easily compatible. This chapter examines the zoning patterns and practices of Santa Clara County in an attempt to assess zoning's role as a potential obstacle to increasing the supply of low and moderate income housing. The rationale for specific zoning decisions is viewed as secondary for the purposes of this investigation; emphasis will be placed upon the effects of zoning decisions on lower cost housing.

THE POTENTIAL OBSTACLES

In July, 1969, the Association of Bay Area Governments (ABAG) conducted a survey of zoning and subdivision ordinances in which planning officials were asked to comment upon the validity of a number of statements about zoning. One of the ABAG statements was, "Zoning regulations are used for the exclusion of socially or economically undesirable residents." Only eight of the governmental units of the County responded to this statement; their comments were:

- A. This has not been a conscious policy in general, but occasionally the statements are made consciously. It is sometimes associated with the property value argument. Some school districts are now active in residential zoning decisions when they fear concentrations of low income or minority students. There is open discussion of consequences of concentrating low income or minority residents. This consideration is sometimes raised in zoning cases.
- B. They could be. However, this has not been my experience here in California.
- C. Zoning regulations are not used for this purpose but may result as such.
- D. My experience has been that (this) naturally follows as a result of (the protection of property values) and may not necessarily be true as a separate purpose or goal.
- E. True - Zoned densities are often kept quite low, which results in large, expensive lots, low-income families or minorities cannot afford them, and are thereby excluded. In many cases, this may be unintentional, but the results are the same.
- F. No.
- G. I believe this is a cynical, emotional appeal which has no basis in fact, at least not in (this city).
- H. Not directly or in most cases intentionally.

Obviously, there is no agreement about the use of zoning for the overt exclusion of low income people from parts of the County. But the fact that several of the respondents indicated that exclusion may result as an unintentional effect of local zoning practice and that one respondent felt that exclusion "naturally follows" the application of zoning points to the importance of zoning as an obstacle to low-moderate cost housing in at least some areas of the County.

Short of exclusion of low income or minority residents, zoning has the potential to frustrate low cost housing to various degrees through obstacles in the forms of single family minimum lot sizes, limitations on multifamily density, the exclusion of mobile homes, administrative problems, and the practice of fiscal zoning.

SINGLE FAMILY DETACHED ZONING: MINIMUM LOT SIZES

The sixteen zoning ordinances in use in Santa Clara County and the fifteen cities in the County provide for a remarkably wide range of minimum lot sizes. Under conventionally zoned densities, lots in the County range from 5,000 square feet (about 1/8 of an acre) to 400,000 square feet (over nine acres).

Table 1 shows the distribution of single family zones by minimum lot size category for each of the County's planning areas as of 1967. In all, there were 120,340 acres of land zoned for single family houses. Of this total, 57,340 acres were reserved for houses on lots greater than 20,000 square feet (about 1/2 acre). Some 38,300 acres were zoned for lots of 5,000 to 6,000 square feet (the smallest zoned lot sizes found in the County). The remaining 24,700 acres were devoted to minimum lots between 6,001 and 20,000 square feet.

Figure 1 plots the zoned acreages listed in Table 1 by planning areas. The colored squares represent the total area devoted to each lot size category in each planning area and are drawn to scale. The uncolored portions of the map are equivalent in area to the land not zoned for single family development.

The two outstanding aspects of the zoning pattern shown in Figure 1 are the locations of areas zoned for 5,000-6,000 square foot minimums and the locations of areas zoned for lot sizes greater than 20,000 square feet. The most dense zones, with the 5,000-6,000 square foot minimums, are heavily concentrated on the valley floor running from the eastern area of San Jose to Palo Alto. Not surprisingly, the largest zoned lots are found in the newer areas of the County surrounding the older urban development. Much of

the area devoted to lots over 20,000 square feet is found in the foothill areas, but it is by no means all land which dictates large lots for topographic or ecological reasons.

Much of the land zoned for lots in excess of 20,000 square feet is in unincorporated territory zoned by the County. Out of 57,340 acres with very large lot zoning, 22,750 are in unincorporated areas. Less than 3,000 acres of this County-zoned large lot land is occupied. Santa Clara County has encouraged urban development to take place in incorporated areas, and has followed a policy wherever possible of encouraging the annexation of unincorporated land into an appropriate city before development actually occurs. When such land is annexed it is rezoned by the city to whatever density is considered most appropriate by that city. The County zone calling for large lot sizes is essentially a holding zone designed to facilitate the orderly development of the unincorporated territories through annexation to existing cities and subsequent rezoning by those cities. Since many acres now zoned for over 20,000 square feet will be rezoned to smaller lots sizes the total of 57,340 acres of large lot zoning is somewhat overstated. Several of the cities may also use large lot zones as a holding device until pressure is felt for rezoning to a smaller lot size.

Lot Size and Land Cost

Land has been the most rapidly rising cost component of housing in Santa Clara County, and now accounts for an average of over 25% of new FHA insured house costs for this area. Land varies greatly in cost from one part of the County to another, with the most expensive land found in the North County. Land in the area from Palo Alto to Los Altos Hills ranges upward from \$12,000 per lot with some view lots costing as much as entire houses may cost in other parts of the County. These extremely high prices mirror the

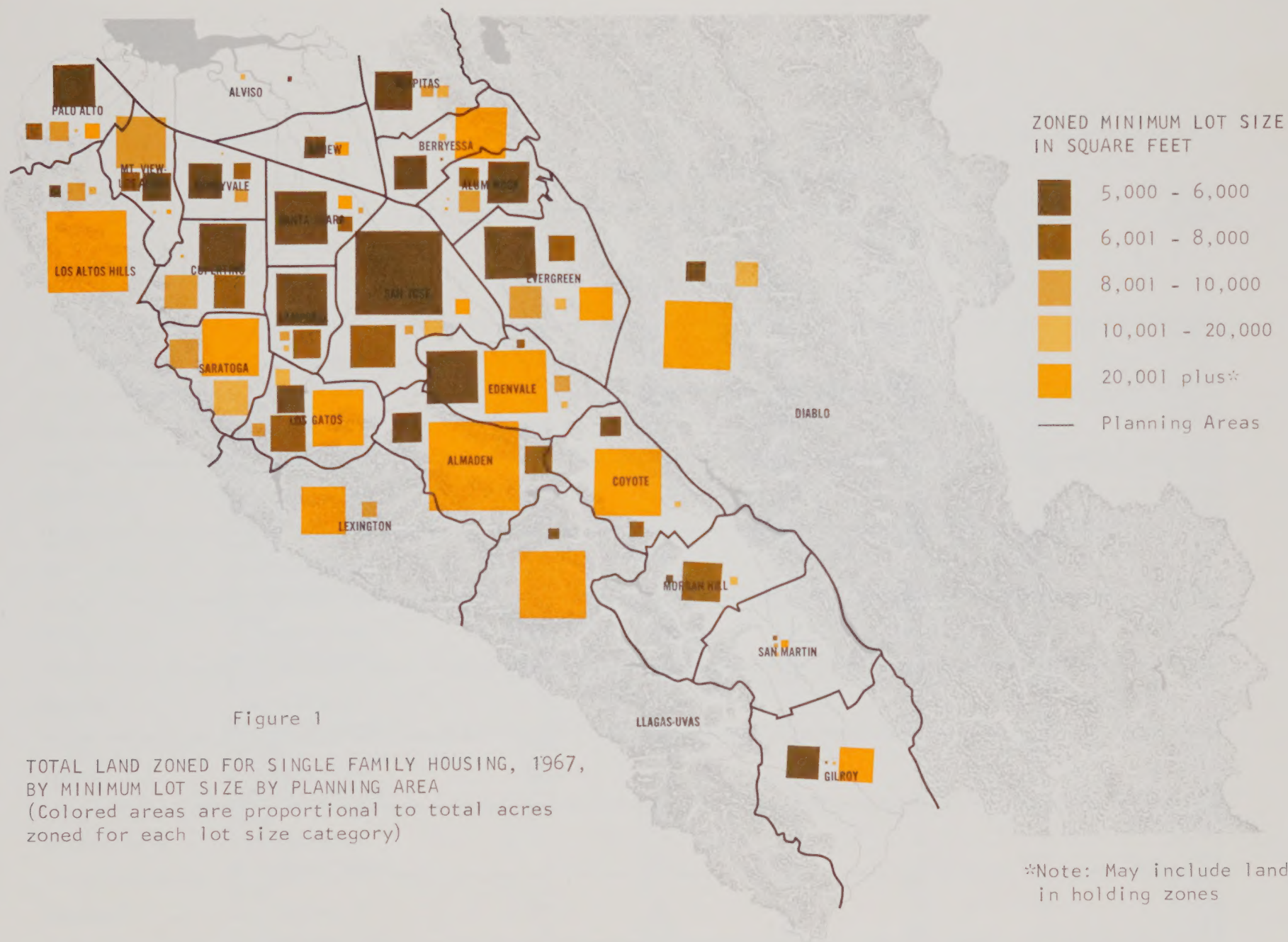


TABLE I

Total Acres⁺ of Single Family Zoning by Lot Size
by Planning Area, 1967

Planning Area ¹		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
A San Jose	Total	7,945	2,260	99	350	302	10,956
	Incorporated	7,209	361	36	0	65	7,671
	Unincorporated	736	1,899	63	350	237	3,285
B Evergreen	Total	2,955	667	1,335	92	1,536	6,585
	Incorporated	2,944	667	39	0	1,399	5,049
	Unincorporated	11	0	1,296	92	137	1,536
C Alum Rock	Total	2,083	411	509	16	10	3,029
	Incorporated	712	116	2	0	0	830
	Unincorporated	1,371	295	507	16	10	2,199
D Berryessa	Total	1,228	8	17	94	2,984	4,331
	Incorporated	1,228	7	17	0	1,849	3,101
	Unincorporated	0	1	0	94	1,135	1,230
E Milpitas	Total	2,681	0	146	147	0	2,974
	Incorporated	2,681	0	146	147	0	2,974
	Unincorporated	0	0	0	0	0	0
F Alviso	Total	41	0	0	67	0	108
	Incorporated	41	0	0	0	0	41
	Unincorporated	0	0	0	67	0	67
G Agnew	Total	540	0	0	0	191	731
	Incorporated	523	0	0	0	0	523
	Unincorporated	17	0	0	0	191	208
H Santa Clara	Total	3,144	207	47	0	144	3,542
	Incorporated	3,141	0	0	0	0	3,141
	Unincorporated	3	207	47	0	144	401
I Campbell	Total	3,072	911	152	66	0	4,201
	Incorporated	3,021	95	22	0	0	3,138
	Unincorporated	51	816	130	66	0	1,063

TABLE 1 - Page 2

Planning Area		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
J Los Gatos	Total	868	1,620	234	203	3,695	6,620
	Incorporated	842	932	234	175	2,206	4,389
	Unincorporated	26	688	0	28	1,489	2,231
K Saratoga	Total	0	0	1,172	1,472	5,171	7,815
	Incorporated	0	0	1,172	1,472	3,581	6,225
	Unincorporated	0	0	0	0	1,590	1,590
L Cupertino	Total	2,516	1,220	1,467	0	5	5,208
	Incorporated	2,265	1,152	671	0	5	4,093
	Unincorporated	251	68	796	0	0	1,115
M Sunnyvale	Total	1,501	367	200	0	3	2,071
	Incorporated	1,501	367	1	0	0	1,869
	Unincorporated	0	0	199	0	3	202
N Mt. View- Los Altos	Total	870	436	3,108	8	16	4,438
	Incorporated	862	328	2,523	0	0	3,713
	Unincorporated	8	108	585	8	16	725
O Palo Alto	Total	2,000	346	500	4	303	3,153
	Incorporated	1,777	345	297	0	272	2,691
	Unincorporated	223	1	203	4	31	462
P Los Altos Hills	Total	122	1	366	59	7,867	8,415
	Incorporated	0	0	46	17	6,962	7,025
	Unincorporated	122	1	320	42	905	1,390
Q Lexington	Total	0	0	283	0	2,295	2,578
	Incorporated	0	0	0	0	0	0
	Unincorporated	0	0	283	0	2,295	2,578
R Almaden	Total	1,116	841	1	2	10,244	12,204
	Incorporated	1,089	840	1	0	1,770	3,700
	Unincorporated	27	1	0	2	8,474	8,504
S Edenvale	Total	3,375	78	406	30	5,049	8,938
	Incorporated	3,365	68	161	0	2,651	6,245
	Unincorporated	10	10	245	30	2,398	2,693

TABLE 1 - Page 3

Planning Area ¹		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
T Coyote	Total	493	251	0	30	5,546	6,320
	Incorporated	493	251	0	0	5,540	6,284
	Unincorporated	0	0	0	30	6	36
U Llagas Uvas	Total	96	0	0	1	5,250	5,347
	Incorporated	96	0	0	0	3,070	3,166
	Unincorporated	0	0	0	1	2,180	2,181
V Morgan Hill	Total	37	1,706	0	38	0	1,781
	Incorporated	25	1,706	0	38	0	1,769
	Unincorporated	12	0	0	0	0	12
W San Martin	Total	0	11	9	15	53	88
	Incorporated	0	0	0	0	0	0
	Unincorporated	0	11	9	15	53	88
X Gilroy	Total	1,146	8	0	3	1,395	2,552
	Incorporated	1,134	0	0	0	0	1,134
	Unincorporated	12	8	0	3	1,395	1,418
Y Diablo	Total	467	15	0	589	5,284	6,355
	Incorporated	467	15	0	0	5,226	5,708
	Unincorporated	0	0	0	589	58	647
TOTAL	Total	38,296	11,364	10,051	3,286	57,343	120,340
	Incorporated	35,416	7,250	5,368	1,849	34,596	84,479
	Unincorporated	2,880	4,114	4,683	1,437	22,747	35,861

+One acre = 43,560 square feet.

¹Planning areas include both incorporated and unincorporated territory and are not equivalent to city boundaries.

Source: Santa Clara County Planning Department, 1967 Land Use Inventory.

relative scarcity of land in the North County. Coming east and south from the highest priced lands, there is a gradual decline in land prices, with the least expensive land found in the South County area from Coyote to Gilroy. But even in the South County, with its fairly abundant land resources, the smallest developed residential lots cost upward of \$5,500. With land taking 25% of house cost and with such high priced land to begin with, it is apparent that any action which tends to increase land costs works a serious hardship on the provision of low and moderate income housing.

Table 2 summarizes land value trends for the County between 1960 and 1969, and divides the County into seven subareas in order to distinguish between areas of higher and lower land value. Table 2 also distinguishes between lots of varying sizes, and demonstrates the validity of the assumption that lot cost in any given area increases as lot size increases. With the exception of Area 1, which includes great locational variety within its boundaries, there is a definite rise in lot value with a rise in lot size within each subarea of the County. If the table were able to distinguish between smaller, more homogeneous parts of the County, the relationship of lot size and cost would probably be even more direct. Since zoning establishes the minimum lot size that can be established in any given residential area, it is clear from Table 2 that zoning also sets the minimum cost level of land within the market constraints of a given location.

The significance of lot size zoning's influence on house costs may be seen by taking an example from Table 2. In Area 5 (Edenvale and Almaden), the cost difference between a 6,000 square foot lot and a 7,500-8,000 square foot lot can be between \$1,000 and \$2,000 and will average about \$1,750. In terms of lot cost alone the increase in lot size may preclude the possibility of building low or even moderate cost housing.

TABLE 2

Land Value Trends for Single Family Developed Lots, Santa Clara County,
1960, 1965, 1969 (Dollars)

AREA	YEAR	LOT SIZE SQUARE FEET			
		6,000 sq. ft.	7,500 - 8,000 sq. ft.	10,000 sq. ft.	ACREAGE/VIEW
1	1960	\$8,000	\$ 6,500 - 7,500	\$ 8,500 - 10,000	\$10,000 - 12,000
	1965	12,000	8,500 - 10,000	10,000 - 14,000	12,000 - 18,000
	1969	\$15,000 - 18,000	12,000 - 14,000	14,000 - 18,000	18,000 - 24,000
2	1960	4,500 - 5,500	5,500 - 6,500	-	-
	1965	6,500 - 8,500	6,500 - 8,000	-	-
	1969	8,500 - 10,000	9,000 - 10,500	-	-
3	1960	-	5,500 - 6,500	8,500 - 9,500	10,000 - 12,000
	1965	-	6,500 - 8,000	9,500 - 12,000	12,000 - 16,000
	1969	-	9,000 - 10,500	13,500 - 15,500	16,000 - 20,000
4	1960	4,500 - 5,500	-	-	-
	1965	6,500 - 7,500	-	-	-
	1969	7,500 - 9,000	-	-	-
5	1960	3,500 - 4,500	4,500 - 5,000	4,750 - 5,750	-
	1965	4,500 - 5,500	5,500 - 6,500	5,750 - 6,750	-
	1969	6,000 - 6,500	7,500 - 8,500	7,750 - 8,750	-
6	1960	3,000 - 4,000	3,500 - 4,500	-	4,000 - 5,000
	1965	4,000 - 5,000	4,500 - 5,500	-	5,000 - 6,000
	1969	6,000 - 6,500	6,500 - 7,000	-	7,000 - 8,000
7	1960	3,000 - 4,000	4,000 - 5,000	4,250 - 5,250	4,000 - 6,000
	1965	4,000 - 5,000	5,000 - 6,000	5,250 - 6,250	5,000 - 7,000
	1969	5,500 - 6,000	7,000 - 8,000	7,250 - 8,250	7,000 - 9,000

Source: California Lands Investment Company



The Northern California Real Estate Research Committee estimates that as of the second quarter of 1970, a medium quality three bedroom, two bath house without fireplace, driveway, garage, or other embellishments costs at least \$18,300 without land.¹¹ On even the least costly land in the County (the 6,000 square foot lots in Area 7 of Table 2) such a house would cost around \$23,800. On 7,500-8,000 square foot lots in the same part of the County, the same house would cost about \$25,800. Included in a mortgage with a 25 year term and 9% interest rate, an increase of \$2,000 in purchase price would actually cost the home buyer about \$4,800 including principal and interest. The minimum size of lot permissible under zoning clearly influences the minimum cost of housing.

The fact that increases in lot size lead to direct increases in lot cost is highly significant; but an even greater increase in house cost may result as an indirect result of the increase in lot size. For a variety of reasons, including developer's practices and investor's expectations on economic return, increases in lot cost tend to increase total house cost by some multiple of the simple increase in lot cost. If a constant ratio were assumed to exist between lot cost and house cost, this fact would be easily demonstrated; for instance, if lot cost were always 1/4 of house cost, then a \$1 increase in lot cost would result in a \$4 increase in total house cost. In practice, the relationship is more complex but similar in effect. Regression analysis of 2,252 FHA insured new houses built in 1967 and 1968 in the County showed that each \$1,000 increase in lot cost was reflected in an increase of \$2,600 in the total purchase price of the homes. If a change from a 6,000 square foot minimum lot size to a 7,500-8,000 square foot lot means an increase in lot cost of \$1,500 (Area 5 of Table 2) then total house cost in a normal tract development would be expected to increase by \$3,900.

Incorporated into a 25 year term mortgage at 9% interest, the total amount paid by a family would be increased by about \$9,900. In reaching decisions about zoned densities for single family housing, then, local governing boards are making very substantial decisions as to the cost of housing likely to develop.

The greatest need at this time is for houses selling for less than \$24,000; if this need is to be satisfied with single family detached houses several observations can be made. First, land costs are too high everywhere in Santa Clara County to favor the development of truly low or moderate cost detached housing. With moderate quality construction and the cheapest residential lots available in the County, it is possible to build single family detached houses for sale under \$24,000, but not at levels of production adequate to meet the need and certainly not at prices very much below \$24,000 for anything but minimal structures. Second, it is highly unlikely that the cost of land will come down in the future; the most that government can probably do is to help assure that costs per lot are not kept unreasonably high through unnecessarily strict zoned impositions on the land market. There is a uniform need for lots of 6,000 square feet and less, and where land prices are the highest, the concessions on density will have to be the greatest if the needs of low and moderate income families are to be accommodated by detached houses. Third, a breakthrough in housing production of lower cost single family detached houses will require cost savings for construction and subsidies for low income households in addition to zoned densities allowing the greatest economies in land cost consistent with any legitimate physical need to control density.

Available Land by Zoned Lot Size

With current Countywide land price levels, it is apparent that low-moderate cost single family detached housing requires small lots. Under conventional zoning, the most likely areas to be developed for lower cost housing are the 5,000-6,000 square foot zones. Areas zoned for 7,000 to 10,000 square feet are marginal to low-moderate cost housing; and it is reasonable to assume that land zoned for over 10,000 square feet will not be developed for houses valued under \$24,000. It is significant, then, that over 2/3 of all undeveloped land zoned for single family detached housing in 1967 was zoned for lot sizes in excess of 20,000 square feet.

Table 3 shows acres of undeveloped land zoned for single family houses for various lot sizes by planning area as of 1967. The same information is presented in map form in Figure 2. "Undeveloped" land includes all land without a permanent structure, and includes land in agricultural use. A comparison of the total areas zoned for single family housing in 1967 (Figure 1) and the land still available for development in 1967 (Figure 2) reveals a quite substantial drop in land zoned for minimum lot sizes of 5,000 to 6,000 square feet. The only areas left with relatively abundant acreages of land zoned for such small lots were the San Jose Planning Area and the planning areas just to the east and south of it. Figure 2 also shows the dominance of large lot zoning; zones with lot sizes above 20,000 square feet predominate the undeveloped zoned land in 14 of the 25 planning areas.

Overall, the supply of undeveloped single family zoned land was plentiful in 1967. Some 71,510 acres of undeveloped land were zoned for single family detached housing, or enough land to accommodate about 147,000 houses and about 560,000 people. Of this total, almost 11,450 were in minimum lot

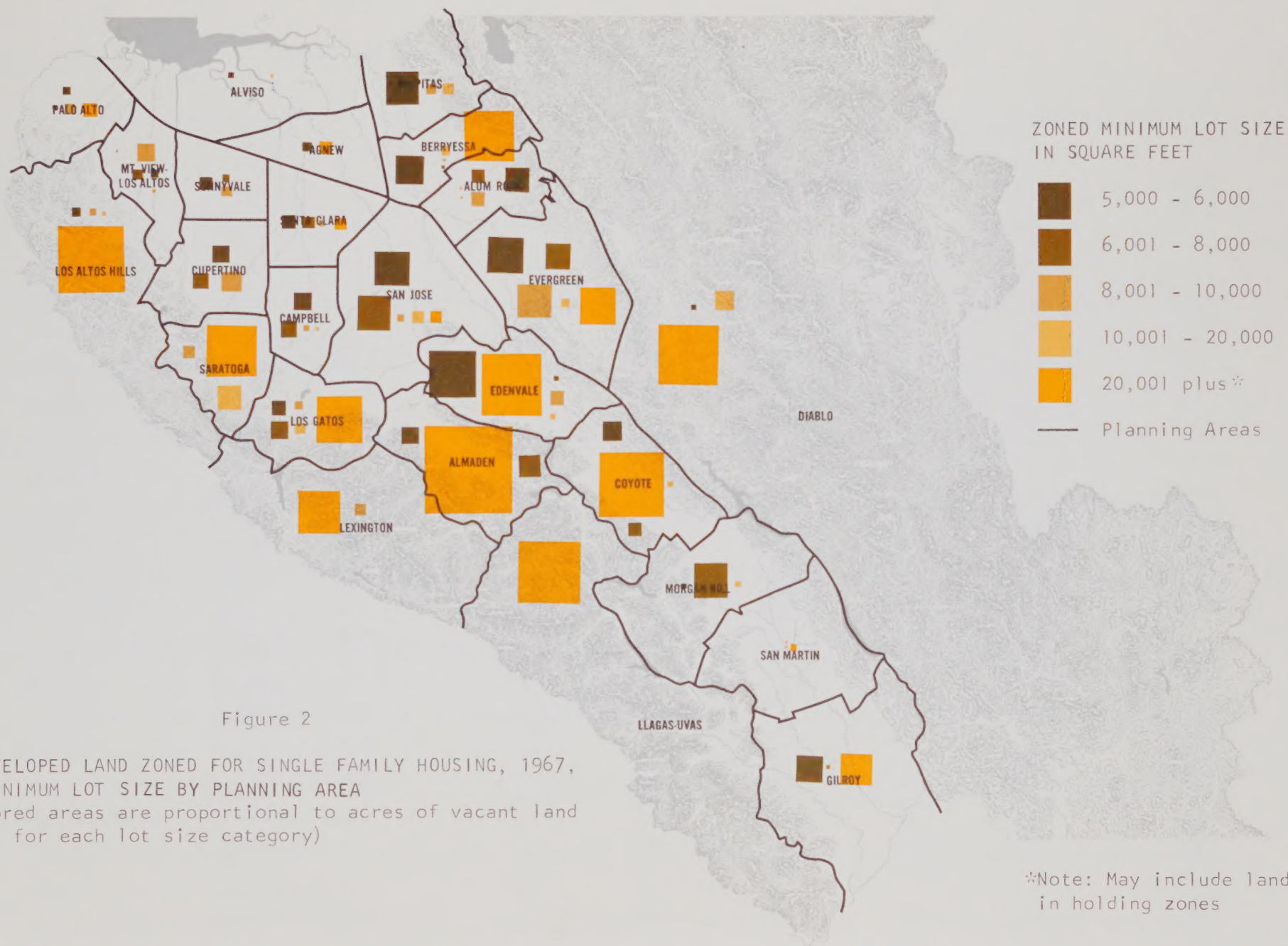


TABLE 3

Acres⁺ of Undeveloped Land Zoned For Single Family Housing,
by Lot Size, by Planning Area, 1967

Planning Area ¹		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
A San Jose	Total	1,402	1,206	62	188	222	3,080
	Incorporated	1,274	210	31	0	19	1,546
	Unincorporated	128	996	31	188	203	1,534
B Evergreen	Total	1,542	592	1,198	89	1,443	4,864
	Incorporated	1,535	592	23	0	1,306	3,456
	Unincorporated	7	0	1,175	89	137	1,408
C Alum Rock	Total	500	233	279	7	4	1,023
	Incorporated	203	18	0	0	0	221
	Unincorporated	297	215	279	7	4	802
D Berryessa	Total	858	6	17	92	2,916	3,889
	Incorporated	858	5	17	0	1,824	2,704
	Unincorporated	0	1	0	92	1,092	1,185
E Milpitas	Total	1,470	0	140	143	0	1,753
	Incorporated	1,470	0	140	143	0	1,753
	Unincorporated	0	0	0	0	0	0
F Alviso	Total	41	0	0	13	0	54
	Incorporated	41	0	0	0	0	41
	Unincorporated	0	0	0	13	0	13
G Agnew	Total	87	0	0	0	182	269
	Incorporated	70	0	0	0	0	70
	Unincorporated	17	0	0	0	182	199
H Santa Clara	Total	203	150	34	0	140	527
	Incorporated	201	0	0	0	0	201
	Unincorporated	2	150	34	0	140	326
I Campbell	Total	350	291	35	18	0	694
	Incorporated	344	37	9	0	0	390
	Unincorporated	6	254	26	18	0	304

TABLE 3 - Page 2

Planning Area ¹		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
J Los Gatos	Total	167	277	58	116	2,540	3,158
	Incorporated	154	164	58	114	1,362	1,852
	Unincorporated	13	113	0	2	1,178	1,306
K Saratoga	Total	0	0	209	635	3,481	4,325
	Incorporated	0	0	209	635	2,200	3,044
	Unincorporated	0	0	0	0	1,281	1,281
L Cupertino	Total	339	253	494	0	1	1,087
	Incorporated	326	250	283	0	1	860
	Unincorporated	13	3	211	0	0	227
M Sunnyvale	Total	165	50	119	0	0	334
	Incorporated	165	50	0	0	0	215
	Unincorporated	0	0	119	0	0	119
N Mt. View- Los Altos	Total	51	97	394	1	11	554
	Incorporated	46	82	247	0	0	375
	Unincorporated	5	15	147	1	11	179
O Palo Alto	Total	58	14	115	0	232	419
	Incorporated	42	14	17	0	225	298
	Unincorporated	16	0	98	0	7	121
P Los Altos Hills	Total	90	0	43	11	4,911	5,055
	Incorporated	0	0	5	5	4,421	4,431
	Unincorporated	90	0	38	6	490	624
Q Lexington	Total	0	0	187	0	2,196	2,383
	Incorporated	0	0	0	0	0	0
	Unincorporated	0	0	187	0	2,196	2,383
R Almaden	Total	309	590	0	0	8,751	9,650
	Incorporated	283	590	0	0	1,366	2,239
	Unincorporated	26	0	0	0	7,385	7,411
S Edenvale	Total	2,542	62	396	20	4,692	7,712
	Incorporated	2,532	53	160	0	2,462	5,207
	Unincorporated	10	9	236	20	2,230	2,505

TABLE 3 - Page 3

Planning Area ¹		Minimum Lot Size in Square Feet					Total Acres
		5,000 to 6,000	6,001 to 8,000	8,001 to 10,000	10,001 to 20,000	20,001 or More	
T Coyote	Total	479	152	0	25	5,477	6,133
	Incorporated	479	152	0	0	5,471	6,102
	Unincorporated	0	0	0	25	6	31
U Llagas Uvas	Total	0	0	0	1	4,993	4,994
	Incorporated	0	0	0	0	2,873	2,873
	Unincorporated	0	0	0	1	2,120	2,121
V Morgan Hill	Total	37	1,527	0	27	0	1,591
	Incorporated	25	1,527	0	27	0	1,579
	Unincorporated	12	0	0	0	0	12
W San Martin	Total	0	0	9	14	53	76
	Incorporated	0	0	0	0	0	0
	Unincorporated	0	0	9	14	52	76
X Gilroy	Total	726	7	0	3	1,324	2,060
	Incorporated	715	0	0	0	0	715
	Unincorporated	11	7	0	3	1,324	1,345
Y Diablo	Total	33	9	0	499	5,284	5,825
	Incorporated	33	9	0	0	5,226	5,268
	Unincorporated	0	0	0	499	58	557
TOTAL	Total	11,449	5,516	3,789	1,902	48,853	71,509
	Incorporated	10,796	3,753	1,199	924	28,756	45,440
	Unincorporated	653	1,763	2,590	978	20,097	26,069

⁺One acre = 43,560 square

¹Planning areas include both incorporated and unincorporated territory and are not equivalent to city boundaries.

Source: Santa Clara County Planning Department, 1967 Land Use Inventory.

sizes of 5,000 to 6,000 square feet; enough to accommodate 57,000 dwellings and about 220,000 people. With such substantial development possible on undeveloped zoned land, it would be difficult to conclude that there was a shortage of zoning for small lot sizes in the County at that time.

But the distribution of small lot zones on undeveloped land shows a decidedly disproportionate share of such land in five planning areas on the east side of the valley. The San Jose, Milpitas, Berryessa, Alum Rock, Evergreen, and Edenvale Planning Areas account for 8,310 out of a total of 11,500 acres of vacant land zoned for small lots. The remaining 3,200 acres of 5,000-6,000 square foot zones are spread thinly about the County. Seven of the fifteen cities in the County have no single family zones allowing development at under 7,000 square feet!

At the other extreme, zones with minimum lot sizes over 20,000 square feet consume 48,850 acres of undeveloped land. 28,760 acres of undeveloped land zoned for very large lots are in incorporated areas. The remaining 20,100 acres are in unincorporated land zoned by the County. As previously noted, much of the County-zoned land is in a "holding zone" intended for annexation and rezoning by the cities before development takes place. The greatest concentrations of the County's large lot zones are in the Berryessa, Los Gatos, Saratoga, Los Altos Hills, Almaden, Edenvale, Llagas-Uvas, and Gilroy planning areas.

Common practice among cities is to zone newly annexed land to the predominate zoned density of land in the surrounding areas of the city. If this practice is followed, the 5,900 acres of County zoned large lot land in the Los Gatos, Saratoga, Los Altos Hills, and Llagas-Uvas planning areas will be more likely to be rezoned to large lots than to small lots; the 1,300 acres in the Gilroy Planning Area will most likely be rezoned to smaller lots; and

the 12,800 acres in the Berryessa, Almaden, and Edenvale planning areas will probably be rezoned to a variety of lot sizes. A portion of the County-zoned large lots will be developed at the present zoned density without incorporation into the cities. A conservative estimate is that at least 6,000 acres of the unincorporated land now zoned for lots of over 20,000 square feet will remain in very large lot zones even after incorporation.

Assuming that most of the city-zoned areas with lots over 20,000 square feet are not intended as holding zones by the cities, it appears that over 30,000 acres of undeveloped land zoned for lots of more than 20,000 square feet are actually intended for development at that lot size. Even discounting for the County's holding zones, very large lots account for nearly half of all undeveloped land zoned for single family housing. Large lot zoning clearly dominates the undeveloped zoned land, having more than twice the acreage of any other residential zone.

Zoning and Actual Development

Several points have been made so far; low and moderate cost detached single family housing requires small lot sizes; there is abundant land zoned for single family housing but it is predominately for very large lots; and the land that is zoned for small lots and still undeveloped is strongly concentrated in five planning areas on the east side of the valley. The extent to which development reflects the zoned pattern remains to be seen.

Several inferences can be drawn from the amount of land rezoned to single family use, the average lot sizes of new construction, the degree to which new development conforms to zoned minimum lot sizes, and the degree to which municipalities are willing to lower lot sizes below normal zoned minimums.

Land Rezoned to Single Family Use

In 1962 there were 105,730 acres of land zoned for single family housing; by 1967 the total had reached 120,340, an increase of 14,610 acres of zoned land. During the same time period, the area actually occupied by single family houses increased from 36,600 acres to 43,810 acres, an increase of only 7,210 acres. Zoned land was being added at about twice the rate of actual development. No more recent comparison is possible, but it seems reasonable to assume that increases in total area zoned for single family housing have kept pace with the rate of increase of land area used for new house construction. If this is the case, it suggests that the location of new housing may not follow the existing pattern of zoning so much as the zoning pattern follows the demand for rezones by developers.

Historically, several jurisdictions in Santa Clara County have had reputations for ease of granting rezones. But willingness to grant zone changes for single family housing does not necessarily indicate willingness to grant small lots. As stated earlier, seven of the municipalities have no zones in their ordinances under 7,000 square feet. In cities which do have small lot zones, developers may find that they cannot obtain densities as high as theoretically possible under the city's ordinance. This is particularly true with cities listing 5,000 square foot lots in their ordinances; in at least two such cities it is an unofficial policy to not grant rezones for lots below 6,000 square feet. The 5,000 square foot zone is now largely an historical carry over from an earlier era.

Under existing County policy, almost all residential rezoning for new subdivisions is carried out by the cities. The County has taken the position that urban development should take place in lands under the control of the

cities, and has therefore required, where feasible, that proposed subdivisions annex to the corresponding city and seek zoning from the city. The result has been a more orderly form of urban growth; but in the process, opportunities for introducing small lots into areas with a scarcity of small lot size zones may have been lost. The County has both 5,000 and 6,000 square foot zones which could apply to unincorporated lands near cities not normally granting small lot rezones. Since the County of Santa Clara processes very few rezone applications for residential subdivisions, the County's small lot zones are of little significance for lower cost housing projects.

Density of Development and Zoned Density

Lot sizes are quite large in Santa Clara County. The average single family lot in Santa Clara County in 1967 was 9,270 square feet in area. Table 4 shows the average lot size of single family housing as of 1967 for each planning area. Individual planning areas varied greatly in average lot size of existing housing ranging from 6,600 square feet to 62,230 square feet in 1967. To what extent such large average lot sizes reflect market phenomena and to what extent they are the result of large lot zoning cannot be determined with the information available; but zoning's influence should not be discounted, especially in maintaining large lot sizes.

For small lot zones, it is possible to make direct comparisons of zoning and actual development for a few subareas of the County. The 1967 Land Use Inventory of the County revealed 56 census tracts where 5,000 to 6,000 square foot zones were between 95% and 100% of all single family zoning for the census tract. Of these, only twelve census tracts had subdivision activity between 1967 and 1969. The average lot size of 36 new subdivisions occurring from 1967 to 1969 in these census tracts was 6,840 square feet.

TABLE 4

Average Lot Size of Single Family Housing, 1967,
by Planning Area

Planning Area ¹	1967 Average Lot Size in Square Feet ⁺
San Jose	6,600
Evergreen	7,780
Alum Rock	8,890
Berryessa	11,465
Milpitas	6,805
Agnew	7,140
Santa Clara	6,600
Campbell	8,220
Los Gatos	12,810
Saratoga	19,800
Cupertino	8,540
Sunnyvale	7,140
Mt. View - Los Altos	10,370
Palo Alto	8,220
Los Altos Hills	43,560
Lexington	25,625
Almaden	11,775
Edenvale	7,260
Coyote	36,300
Llagas Uvas	72,600
Morgan Hill	17,425
San Martin	39,600
Gilroy	10,370
Diablo	62,230
TOTAL COUNTY	9,270

+One acre = 43,560 square feet

¹The Alviso Planning Area is not reported.

Source: Santa Clara County Planning Department

There were only four subdivisions with lots averaging below 6,000 square feet; three of these were in the Evergreen planning area and one in the Milpitas planning area. Several subdivisions had average lot sizes over 9,000 square feet. In general, it appears that developers have not attempted to attain the highest density possible under small lot zoning. Since zoning merely sets minimums, it is not surprising that provision of 6,000 square foot zones does not necessarily lead to development at that density. Small lots may be needed for lower cost single family housing, but the provision of small lot zones is not sufficient to assure the provision of such housing.

Willingness to Lower Lot Size

Zoning for small lots may not necessarily cause developers to seek maximum possible density nor lowest possible cost; but if a developer does wish to build houses for lower income households, he must have zoning allowing fairly small lots. Perhaps the best measure of governmental willingness to facilitate provision of lower cost units, then, is the degree to which they have been willing to make concessions on density.

Several of the local zoning ordinances provide for 5,000 square foot lots, but none is actively using this zoned density. In the years 1967 through 1969 there were only 24 subdivisions in the entire County with single family detached houses on lots averaging less than 6,000 square feet. In all, these subdivisions provided 2,046 lots; 1,885 of this total were located in the Milpitas, Evergreen and Edenvale Planning Areas. The remaining 120 lots were in six subdivisions scattered around the County. Except for San Jose and Milpitas, it appears that there has been a general unwillingness on the part of local governments to allow development of single family detached housing on lots smaller than 6,000 square feet.

Minimum Lot Size Zoning, Conclusions

For any given area of the County, the minimum possible cost of housing increases as lot size increases. With currently high costs for construction and land both working against the provision of houses selling for much less than \$24,000, developers seeking to meet the needs of low and moderate income households with single family detached housing must have land zoned for 6,000 square foot lots or smaller. In 1967, there were 38,300 acres zoned for such densities but only 11,500 acres of land zoned for 6,000 square foot lots were still unoccupied and available for new construction. Over 8,300 acres of the undeveloped land zoned for small lots was concentrated in five planning areas running from Milpitas to Edenvale. This same area, from Milpitas to Edenvale, is the only part of the County where any significant amount of development for single family detached housing on lots under 6,000 square feet took place from 1967 through 1969.

By far the greatest part of residentially zoned land in the County is devoted to minimum lot sizes in excess of 1/2 acre. Almost half of all undeveloped land zoned for single family housing in 1967 was in very large minimum lot size zones in which it is reasonable to assume that zoning is a decided obstacle to the provision of low and moderate cost housing. Another 1/6 of the vacant zoned land for single family housing as of 1967 was devoted to lots larger than 6,000 square feet but less than 1/2 acre; this land must be considered marginal for development of lower cost housing. Given a combination of high land costs and large lot zoning, there are some areas of the County where the use of the term "exclusionary zoning" might well be justified.

ZONING FOR MULTI-FAMILY HOUSING

For the purposes of this study, "multi-family housing" is defined as housing with 3 or more units per structure. There are several ways in which zoning can directly influence the provision of lower cost multi-family units. A jurisdiction may choose to eliminate multi-family development entirely by refusing to grant multi-family zones, or it may keep the amount of land zoned for multi-family development at such low acreages that very little development is possible. Zoning also sets the density of development possible in multi-family zones, and can influence the cost of land per unit in the process.

Availability of Multi-Family Zoning in Santa Clara County

With several notable exceptions, the land zoned for multi-family development is well spread over the urbanized part of the valley. Figure 3 shows the actual 1970 distribution of multi-family zoned land in the County, and demonstrates that the greatest concentration of such zoning occurs in the area running from eastern San Jose to Palo Alto. Other concentrations of multi-family zoning follow major transportation routes, especially Highway 280, Highway 17, Blossom Hill Road, Capitol Expressway, and Highway 101. There are five planning areas with no multi-family zoning: Los Altos Hills, Coyote, Llagas Uvas, San Martin, and Diablo. Only the Los Altos Hills Planning Area might reasonably be called part of the urbanized area of the County. On a city by city basis, there are only two cities without zoning provisions for multi-family housing, Los Altos Hills and Monte Sereno.

Not only is there a good overall distribution of multi-family zoning in the County, but there is a fairly even distribution of vacant lands within such zones, as shown in both Figure 3 and Table 5 (Multi-Family Zoning by

TABLE 5

Multi-Family Zoning by Planning Area, 1967
(Structures With 3 or More Dwelling Units)

Planning Area ¹	Total Acres Multifamily Zoning	Acres of Unoccupied Land	Acres of Occupied Land
San Jose	2,883	517	2,366
Evergreen	145	111	34
Alum Rock	963	458	505
Berryessa	277	267	10
Milpitas	207	115	92
Agnew	136	104	32
Santa Clara	625	75	550
Campbell	762	206	556
Los Gatos	470	107	363
Saratoga	220	75	145
Cupertino	804	414	390
Sunnyvale	1,184	349	835
Mt. View-Los Altos	968	182	786
Palo Alto	509	108	401
Los Altos Hills	0	0	0
Lexington	85	47	38
Almaden	77	32	45
Edenvale	332	301	31
Coyote	0	0	0
Llagas Uvas	0	0	0
Morgan Hill	367	292	75
San Martin	0	0	0
Gilroy	306	83	223
Diablo	0	0	0
TOTAL COUNTY	11,320	3,843	7,477

¹The Alviso Planning Area is not reported.

Planning Areas include both incorporated and unincorporated territory.

Source: Santa Clara County Planning Department, 1967 Land Use Inventory

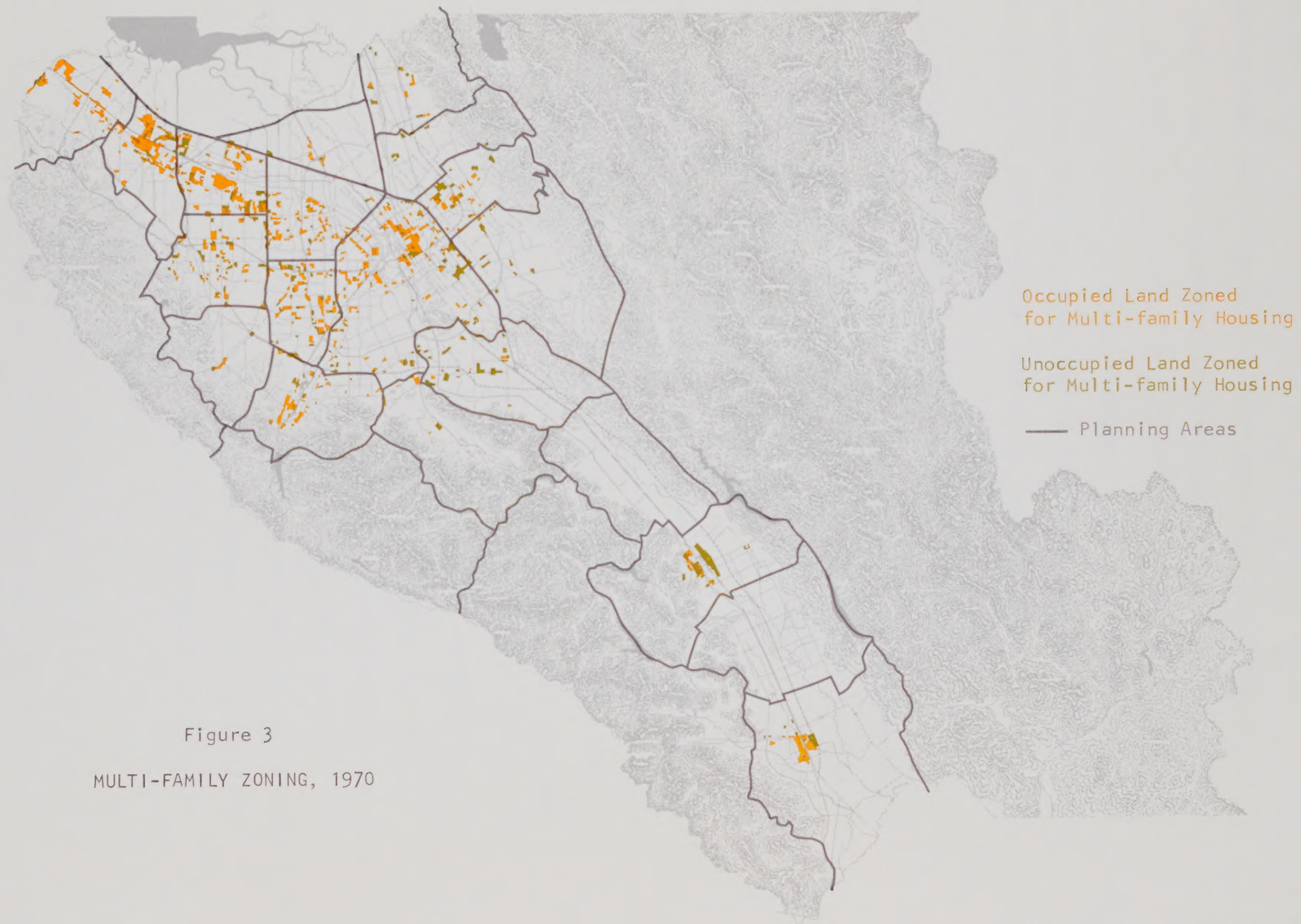


Figure 3
MULTI-FAMILY ZONING, 1970

Planning Area, 1967). "Occupied land" in both Figure 3 and Table 5 is defined as land with a permanent structure whether or not the land is used for multi-family housing. In 1967, over 1/3 of all land zoned for multi-family housing was available for development. Santa Clara County has reasonable amounts of land zoned for multi-family housing and a reasonable distribution of such zones over most of the urbanized area.

Zoned Densities for Multi-Family Housing

The fourteen zoning ordinances which allow multi-family development vary in density from a maximum of 16 units on a one acre site to over 70 units on a one acre site. Land in the unincorporated areas is eligible for a County zone allowing about 45 units on a one acre site.

One of the best indications we have as to the density required for low cost apartments is the type of construction associated with development at various densities. As mentioned in Chapter 2, it is common to build conventional woodframe structures up to 20 or 22 units per acre. Densities much above 22 units per acre generally require more costly forms of construction, more costly foundation work, and costly amenity features including landscaped screening, covered parking, and recreational facilities. As a result, the cost of improvements on very high density multi-family structures tends to overshadow the cost savings per unit of land realized through high density development. But up to about 22 units per acre savings can be realized with increasing density of development. If a developer is aiming at the lowest rents possible, he may feel that zoning allowing at least 22 units per acre is a necessity.

Four cities have maximum densities just below 22 units per acre: Cupertino (16 units/gross acre); Saratoga (19/acre); Milpitas (20/acre); and Morgan

Hill (20/acre). With the exception of Monte Sereno and Los Altos Hills, which have no multi-family zones, all other parts of the County are eligible for zoned densities high enough to easily accommodate developers needs for economies in land cost per unit. Whether the various zoning jurisdictions are willing to grant their most dense multi-family zones is a second question.

A survey of current zoning maps showed that where multi-family zoning has been granted it has been overwhelmingly granted at densities of at least 20 units per acre. This fact is underscored by the density of multi-family development which has actually occurred. Table 6 shows the average density of all multi-family structures with five or more units as of 1967. Where multi-family development occurred it averaged between 20 and 30 units per acre. Only four planning areas (Saratoga, Evergreen, Almaden, and Morgan Hill) had development averaging below 20 units per acre. Six planning areas had no multi-family housing in structures of five or more units. Both zoning and actual development indicate that where multi-family activity has been allowed it has been allowed at reasonably high densities.

Since 1967 there has been a movement to reduce allowable density in some of the local communities. At least three cities are actively considering a reduction in either the amount of land zoned for apartment densities or a reduction in number of units per acre allowable. One city has recently put a freeze on development within its area zoned for high density apartments, allowing only single family houses to be built until a new, lower density formula can be agreed upon.

TABLE 6

Average Multi-Family Density, by Planning Area, 1967

Planning Area ¹	Average Density, Structures With 5 or More Units, 1967 (Units/Acre)
San Jose	41
Evergreen	15
Alum Rock	32
Berryessa	--
Milpitas	30
Agnew	31
Santa Clara	32
Campbell	33
Los Gatos	22
Saratoga	11
Cupertino	23
Sunnyvale	26
Mt. View-Los Altos	29
Palo Alto	21
Los Altos Hills	--
Lexington	--
Almaden	18
Edenvale	26
Coyote	--
Llagas Uvas	--
Morgan Hill	27
San Martin	9
Gilroy	29
Diablo	--
TOTAL COUNTY	29

¹The Alviso Planning Area is not reported.

Planning Areas include both incorporated and unincorporated territory.

Source: Santa Clara County Planning Department

Multi-Family Zoning and the Price of Multi-Family Land

The relationship between zoned multi-family densities and land cost is extremely complex. The most meaningful measure of land cost for multi-family housing is land price per unit, which is a function of both the cost of land per acre and the density of development possible on the land. Table 7 shows that land price per unit ranges from a low of about \$1,000 to a high of over \$6,000, depending upon location and density.

It is commonly assumed that rents include one percent of land value per month. That is, if land per unit is valued at \$2,000, rent will include a payment of \$20 per month toward the value of the land. Using this rule, it can be seen that the direct increase in rents due to land price between the lowest priced and most expensive land in the County would be on the order of \$50 or more per month per unit. But for many locations in the County, there is a difference of only \$1,000 to \$2,000 per unit in land price. For much of the County, then, locational differences directly account for only \$10 to \$20 per month difference in rent. For federally subsidized housing, the difference in payment toward land between even the least expensive and most expensive County lands is surprisingly low. The federal 236 interest subsidy program can reduce tenant's monthly payment toward land by 1/3 of the market rate. If only direct land price were reflected in apartment rents, then price of land per unit and marginal changes in density allowed under zoning would account for relatively small changes in rent, especially in subsidized housing.

In practice, however, it is observed that more valuable land usually leads to more luxurious improvements and consequently to relatively great increases in total rent. Developers are not likely to put the same quality structures on very high value land that they would put on lower value land. In addition,

TABLE 7

Price Per Unit, Multi-Family Land, August, 1970

Planning Area	Dollars
San Jose	\$ 1,700 - 4,000
Evergreen	1,200 - 2,500
Alum Rock	1,700 - 2,700
Berryessa	1,500 - 2,200
Milpitas	1,500 - 2,500
Agnew	1,400 - 2,200
Santa Clara	2,400 - 3,500
Campbell	1,800 - 2,800
Los Gatos	2,200 - 3,200
Saratoga	2,800 - 3,800
Cupertino	2,400 - 3,500
Sunnyvale	2,200 - 3,000
Mt. View-Los Altos	3,000 - 6,000+
Palo Alto	5,000 +
Los Altos Hills	--- ---
Lexington	--- ---
Almaden	1,800 - 2,500
Edenvale	1,500 - 1,900
Coyote	1,000 - 1,500
Llagas Uvas	--- ---
Morgan Hill	1,000 - 1,500
San Martin	1,000 - 1,500
Gilroy	1,000 - 1,500
Diablo	--- ---

Source: Santa Clara County Planning Department

local governments may require costly site improvements in ways not related to zoned density. Architectural and site review and other devices giving discretionary power to governing boards often insure that site improvements are commensurate in cost with the land values of an area.

Multi-Family Zoning and Development

Multi-family zoning has had a particularly undistinguished record for determining land use in Santa Clara County. In 1967 there were 11,320 acres of land zoned for multi-family housing. 7,480 of these acres were occupied by some permanent structure and land use, but only 2,470 acres of land in the County were developed as multi-family housing. There were about 4,000 acres with multi-family zoning actually being used for other permanent land uses, including single family housing, industry, commerce, and other activities. The poor fit between multi-family zoning and actual development leads to several observations about the efficacy of conventional multi-family zoning.

First, the existence of multi-family zoning appears to influence the asking price of land. Despite the fact that there was more vacant land zoned for multi-family housing than there was land used for multi-family housing in 1967, property owners have had a tendency to place very high prices on vacant land zoned for multi-family housing. Developers often complain that the cost of land zoned for multi-family development is too high to make apartment development feasible on such land. Property owners are encouraged to act "irrationally," believing that multi-family zoning will lead to multi-family development, and that their land should command a premium price. In the process, the orderly development of land may be frustrated and the ultimate use of the land may be forced into patterns not visualized by the zoning authorities.

Second, an examination of aerial photographs of areas zoned for multi-family development showed that a sizable portion of the occupied multi-family zoned land was used for single family houses; especially in older areas of the County. Many of the houses were probably in existence before the areas were zoned for multi-family use. In some of these areas there is a gradual transition to multi-family densities through construction of apartments, conversion of older houses to apartments, and the establishment of boarding houses in old residential structures. If there are other factors encouraging redevelopment or change in neighborhood character, zoning may act to either hasten or slow the changes that take place. In areas of existing single family use zone changes to higher intensity uses are generally considered detrimental to neighborhood stability and may work hardships on those residents who desire to preserve the residential character of such areas. In some parts of the County zoning has become an important issue in the redevelopment of old lower income residential areas near expanding commercial centers.

Conclusions About Multi-Family Zoning

Santa Clara County has abundant land zoned for multi-family housing. In 1967 there were 2,470 acres of multi-family land use and 11,320 acres of multi-family zoning. Only two cities exclude multi-family dwellings, and most of the other jurisdictions have shown a willingness to grant densities averaging above 20 units per acre. Vacant multi-family zones are fairly well dispersed throughout the County.

If zoning acts to hold development below densities that developers and the market would otherwise establish, it can effectively increase the per unit price of land. In addition, it appears that zoning for multi-family use

increases the per acre price of land above the raw land price for less intense uses. Developers usually build more expensive units on high priced land, but land costs alone do not necessarily bar lower rent units from most of the County. An increase of \$1,000 per unit in land value will directly account for only about \$10 in monthly rental rates. Under the federal interest subsidy program, a \$1,000 per unit increase in land costs may account for as little as \$6 to \$7 per month in rent.

As a tool for guiding development, multi-family zoning has not been much of a success. Only about one third of the land zoned for multi-family housing is actually used for multi-family housing. There is more unoccupied multi-family-zoned-land than land actually used for multi-family housing; and more land yet is zoned for multi-family housing but used for other permanent land uses.

In view of the past inability of multi-family zoning to adequately guide development many cities have treated requests for multi-family zoning on an individual case basis. This approach seems to be gaining prominence through the use of Planned Unit Developments.

PLANNED UNIT DEVELOPMENT

Planned Unit Developments (PUD's) are becoming increasingly important for lower cost housing in the County. Only one municipality in the County does not have some sort of PUD provision. The other fifteen jurisdictions have a variety of PUD ordinances given one of several titles ranging from Planned Community to Cluster Permit. All have inherent flexibility which could be used to the developer's advantage, and all give the governing body great discretionary control over development. At least four of the ordinances specifically forbid increases in density above levels allowed under the conventional zoning of the jurisdiction, but all allow variations from the rigid setback, sideyard, and building placement requirements of conventional zoning. Several ordinances specifically allow increased densities as incentives to creative design.

Low and moderate cost housing is drawn to the PUD for several reasons. The most common is a hope to gain concessions of density. In some jurisdictions, the governing boards have let it be known that they will not favorably consider requests for rezoning for lower cost units except under a PUD where they have a chance to closely control the developments. One type of development that has found the PUD particularly needed is the townhouse, since conventional zoning in this area does not meet its special needs.

The townhouse, or single family attached dwelling, requires density above that allowed for single family housing and cannot, by definition, meet the sideyard provisions of single family zones. As a result, townhouses have been limited to multi-family zones, where costs per unit for land are generally prohibitive, or to PUD's. Townhouses are also the most significant recent development in this area for providing lower cost owner-occupied housing and give one good indication of the willingness of local government

to use planned unit developments for the provision of low and moderate cost housing.

From the beginning of 1969 through June of 1970, there were 24 townhouse subdivisions recorded in the County, with a total of 3,443 lots. San Jose accounted for 13 of these subdivisions and 2,610 of the lots; the average lot size of the San Jose subdivisions was 2,463 square feet. The remainder of the subdivision activity for townhouse developments was divided among Milpitas, Santa Clara, Cupertino, Los Gatos, Sunnyvale, Saratoga, and the unincorporated area; the average lot size was 3,959 square feet. For 1969, townhouses accounted for 24% of all residential subdivision activity, and for the first six months of 1970, they accounted for 45% of all subdivided lots in the County! Almost all of the townhouse activity has taken place under PUD's and the record on such development gives overwhelming evidence of the willingness of some of the local communities to grant lot sizes smaller than conventional zoned single family minimums. However, much of the land used for townhouse PUD's may have been previously zoned for multi-family land use. The City of San Jose has been the leader in the trend toward townhouses and deserves credit for its action.

Not all of the townhouse activity qualifies as low cost, of course, but all the developments have been at densities that would not have been possible except under the multi-family zoning of the community. The lowest cost units now being offered for sale are priced at about \$15,000, and it is reasonable to assume that that is the lower limit of the savings possible under zoning in Santa Clara County at this point in time. For further cost reductions, it will be necessary to look elsewhere for relief--not to zoning.

Planned unit developments are also important for apartments and single family detached housing; but there is, unfortunately, little hard information on the impact of the PUD on these types of housing. The bulk of PUD development appears to be taking place in units above the lower price range. A questionnaire developed by the Housing Element Program showed that only four jurisdictions had actually used their PUD provisions for low cost housing. Of those local governments reporting no use of their PUD ordinance for low cost housing, only three indicated that such housing was infeasible in their areas.

With the example of the townhouses, it is apparent that PUD's can be used in ways which work toward the provision of low cost housing; but it should also be pointed out that there is great power in PUD procedures to frustrate attempts to lower housing cost. Although no figures are available, there have definitely been examples of costly changes in development plans imposed upon developers attempting to provide low cost housing. There is, in fact, great uncertainty to be faced in applications for a planned unit development and a very real possibility of financial loss for potential developers. PUD ordinances generally require detailed site and architectural plans which are costly to produce and which may fall victim of the aesthetic peculiarities of the governing or administering individuals. More than one developer has lost money on what he has viewed as the caprice of those administering PUD ordinances. This is, of course, an inescapable problem with discretionary development controls; but it has acted to create some reluctance on the part of developers to attempt PUD developments--especially for lower cost units where the probability of conflicts appears the greatest.

ZONING AND MOBILE HOMES

Mobile home activity in Santa Clara County recorded significant gains during the ten year period from 1960 to 1970. Since 1965 this growth has accelerated and is continuing to increase at a very rapid rate.

During the period 1960-1965 the number of mobile home parks increased from 66 to 79. Occupied spaces moved from 3,490 to 5,330, an increase of 53 percent. In the period 1965-1970 the number of mobile home parks increased from 79 to 95, or at about the same rate as the previous five years; however, total occupied spaces increased 80 percent, reflecting the larger size of the newer mobile home parks.

In March, 1970 San Jose lead the County with 30 existing mobile home parks containing 4,876 spaces. Sunnyvale had 13 parks and 2,525 total spaces. Mountain View had 11 parks, with a total of 1,273 pads.

Despite the notable gain in mobile home activity, the location of mobile homes is severely limited under present zoning in Santa Clara County. Individual mobile homes on their own lot are not allowed in any of the incorporated areas of the County except as temporary structures during construction of a permanent building. Individual mobile homes may be located with a use permit in unincorporated areas on any agricultural parcel of land with more than five acres of land if the property is used for agriculture; on a three acre or larger site in several County zones with architectural and site approval; or as a temporary residence during construction of a permanent structure. All other mobile homes in the County must be located in mobile home parks.

Mobile home parks are permitted in only seven cities and in the unincorporated areas. Four cities and the County allow mobile home parks in some

residential zones with a use permit, and three cities have special mobile home park zones. Preference in most cities has been for location of mobile home parks in industrial and commercial areas. In almost all instances, mobile home parks must come before the planning commission and governing council for final approval.

PROBLEMS OF ZONING ADMINISTRATION

In July of 1969 the Association of Bay Area Governments (ABAG) conducted a survey of zoning and subdivision ordinances which included the question: "What are the principal complaints, if any, about zoning regulations and their administration?" The responses given by the nine planning staffs which returned the questionnaire showed that public complaints fall almost entirely into three categories: 1) zoning processing takes too much time; 2) zoning is too inflexible; and 3) cities won't allow high enough densities. The most frequent of these complaints was about the time and expense involved in zoning processing. Although not necessarily costly in itself, an application for a change in zoning may work a considerable economic hardship on a potential developer by delaying construction. At least part of the time in zoning administration stems directly from rather cumbersome administrative procedures often involving review by staff, commission and council, possibly with several public hearings taking place. If a project is judged inadequate at any point in its processing, it may have to go through the entire administrative procedure repeatedly until it is finally approved or rejected.

For low and moderate cost housing developments, zoning decisions are often subject to considerable public pressure which may play a significant part in the final outcome. A questionnaire prepared by the Housing Element staff asked local planning officials to list problems that have occurred when developers have requested zone changes involving low income housing. Only one city reported that it had experienced no significant difficulties with the low income housing projects which have been developed. Eight of the respondents indicated that they had had no requests for low income housing on which to base an answer. The remaining seven respondents all reported that on at least one occasion concerted public pressures had been exerted for the rejection of zoning for low income housing projects. Fears have

been expressed about neighborhood property values, alleged incompatibility of the low income housing with the neighborhood, fear of overcrowding the schools and streets, and in some instances, a fear of creating a ghetto.

There appears to be general agreement among the zoning administrators within Santa Clara County that zoning is used to protect existing property values. The ABAG questionnaire asked for comments on the statement that "In addition to protection of health, safety, and morals of residents, zoning regulations are primarily used to protect neighborhood property values." The comments received were:

A. "This statement is generally true in this area. . .

We observe that the residents of newer subdivisions up to 10 years old protest against apartments or lower cost subdivisions on the basis of property values. They seem to be concerned with the specific price, their own mortgage, and the potential for resale. They act to preserve or enhance their investment, which in many cases seems precarious.

On the other hand, residents of older residential areas seek to preserve the 'established character of the neighborhood.' They refer to having been taxpayers for many years and thereby having a claim to protection. They seem to have a more generalized resistance to change. . . ."

B. Not primarily. To a degree zoning regulations do. There is some good validity for this approach. It wouldn't be too reasonable to drop a \$20,000 home into a neighborhood of \$60,000 homes.

C. To some extent, yes.

D. True.

E. I believe the above to be a valid comment inasmuch as I have heard this idea expressed at various commission and council meetings by city officers.

F. True. Citizens or elected officials who fear change will often oppose a rezoning on the grounds that it is a threat to neighborhood property values.

To the extent that planning commissions and governing boards can be convinced that low cost housing projects will adversely affect property values,

it appears that opponents of low income housing developments will be able to influence the zoning decisions.

The majority of the planning officials interviewed in the Housing Element's survey of zoning stated that price of housing is not a consideration in zoning decisions before the staff, planning commission or governing board of their jurisdictions. Six cities stated that they do consider the price of housing when making zoning decisions.

FISCAL ZONING

There is no doubt that fiscal zoning is being practiced to varying extents by some of the local governments in Santa Clara County. The fiscal policies designed to build industrial and commercial tax base are clearly defined in some areas; but the corollary policy of a deliberate exclusion of low income residents for fiscal purposes has not been demonstrated. The record, however, is mixed between the various communities in the County. The best statements about the existence or denial of fiscal zoning come from the ABAG questionnaire, in response to the statement: "In addition to protection of the health, safety, and morals of residents, zoning regulations are used as fiscal tools to increase the tax base or avoid the need for expensive services." Nine of the governmental units in the County responded; their comments were:

- A. Some of the small cities are explicit about large lot zoning as a means to avoid expensive services. The large cities are open about their use of zoning to secure industrial or commercial uses for tax base.
- B. You could argue that zoning is used to increase the local tax base. However, supply and demand overrule zoning over the long term.
- C. Not in our community.
- D. This would seem an improper use of zoning regulations. Zoning regulations serve two primary functions--as a tool by which the adopted general plan is implemented; and a means by which the policy body of a community implements the development standards expressed by the citizens of that community.
- E. I believe the above to be a valid comment inasmuch as I have heard this idea expressed at various commission and council meetings by city officers.
- F. True. The supply of land zoned for residential purposes can be diminished by pressures for zoning which will permit 'tax base' uses.
- G. If this is so, it is an indirect result of the main goal to provide a well balanced community containing residential, commercial and industrial.

- H. I believe this is a cynical, emotional appeal which has no basis in fact, at least not in (this city).
- I. Yes, especially in a low density residential community such as (this city).

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

SUMMARY OF CONCLUSIONS

As an obstacle to low and moderate cost housing, zoning plays two roles greatly different in their impact. First is the effective denial through zoning of a reasonable chance for some people to live in particular geographic areas. The second role is the effect of zoning to bar marginal cost advantages in areas where low cost housing is most feasible.

The first type of obstacle, exclusion of lower income residents, has received the most attention nationally, and has the most obvious social consequences. In Santa Clara County there are areas where the combination of high land cost, reluctance or refusal to grant multi-family zoning, and the predominance of large lot zoning combine to virtually eliminate the possibility of new housing that even middle income families might reasonably afford. The issue in this area extends beyond the denial of choice in residential location to the lower income. The larger issue is the use of the police power in a manner that inhibits any meaningful measure of socio-economic integration within sizable geographic areas.

The second set of zoning obstacles that are of importance in Santa Clara involve marginal changes in zoned density and site development restrictions which could make the difference between housing just beyond the reach of moderate income families and housing they could afford. The major difficulty in single family housing has been to increase production of houses selling for under \$24,000. But given the most liberal zoning and commonwall construction, it appears that single family owner-occupied housing below \$15,000 is unlikely without massive subsidies. The dilemma for local governments, then, is to decide what cost housing they might be able to realize

with concessions in their zoning patterns and what those concessions might actually mean in terms of overall residential quality. Fortunately, most local jurisdictions have adopted a device which allows them to make such concessions on a selective basis without undermining the integrity of their zoning ordinance--the planned unit development. It is this device which offers the greatest hope for moderate cost housing. As for the families with truly low incomes, the best that zoning can probably accomplish is to establish standards which facilitate the provision of subsidized housing; no matter how liberal the zoning of a community is, there are limits to what can be accomplished. Liberal zoning may be necessary for lower cost housing but it is not sufficient for its provision.

The extent to which zoning acts as an obstacle to low and moderate cost housing production varies greatly among localities in the County. At one extreme are jurisdictions where zoning practices prohibit small lots and apartments entirely. At the other extreme are a few municipalities which have shown a willingness to grant very liberal zoning so that lower cost housing can be built. Most of the jurisdictions have a mixed record.

It should be remembered that traditional approaches to zoning have specifically avoided consideration of the price of housing to be developed. Development standards have been based on the type of physical environment desired by the community and not on the basis of who could afford that environment. It has only been in the last few years that attention has been focused on the effects of traditional zoning patterns on low and moderate income households. The record for 1969 and the first half of 1970 has shown a remarkable ability of at least some of the jurisdictions practicing zoning to accommodate the tight housing situation and the need for increases in density. The City of San Jose has shown considerable flexibility in handling

large numbers of townhouse developments; several of which have represented major cost reductions for owner-occupied housing.

It is also important to stress the rather narrow focus of this study. The only criteria by which zoning has been assessed has been its impact on low and moderate cost housing. There are a number of development goals represented in existing zoning patterns which may work against the provision of lower cost housing but which may, nonetheless, be legitimate and socially justifiable. As an example, much of the land zoned for large lot single family development has open space and ecological motivations aimed at preserving some of the best qualities of this area. Conflicts between the goal of increasing the supply of low and moderate income housing and other development goals are probably inevitable. But in arriving at zoning decisions, it is important that the effects of the decisions on housing cost and production be given explicit consideration and weight commensurate with the size of the housing problem facing the County.

The very decided ability of zoning to limit possibilities for low and moderate income housing production has such major social implications that additional safeguards are needed in the exercise of the zoning power. If the individual's freedom to participate in the housing market is to be protected, there are a number of changes that should be effectuated in both zoning practice and in the conditions influencing the use of zoning.

POLICY RECOMMENDATIONS

The National Commission on Urban Problems identified the challenge confronting land use controls as "achieving quality development, without needlessly increasing the cost of development, while at the same time assuring fairness to those affected by the system."¹² The following policy statements are recommended as a step toward answering that challenge.

1. The use of zoning in ways which consciously exclude persons on the basis of racial, economic or ethnic characteristics is unacceptable in the cities and unincorporated areas of Santa Clara County.
2. Zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all income levels in each jurisdiction, and generally in proportion to employment opportunities in each jurisdiction.

RECOMMENDATIONS FOR CHANGES IN ZONING AND PLANNING PRACTICE

The provision of low and moderate cost housing could be facilitated through a number of changes in the approaches, practices and procedures used in planning and land use regulations. The following recommendations include both specific technical or procedural matters and general suggestions as to approaches which should be given consideration. The recommendations are aimed at the local, state, and federal levels of government. Implicit in the following recommendations is the present failure of zoning to consider the cost of housing or the income level of housing occupants. A necessary condition for the realization of several of the recommendations is the establishment through state legislation of the ability of zoning to take explicit account of low and moderate income housing in the conditions imposed upon land development.

I. The Local Level

A. Articulation of Housing Policy

A clear set of housing policies should be formulated by each jurisdiction and the performance of zoning measured against these policies. The fundamental purpose of land use controls is to implement the development policies of a jurisdiction, especially as expressed in its comprehensive plan. The influence that zoning has on housing is of such importance that explicit account must be taken of the impact of such control on housing. State and federal requirements of a Housing Element are a recognition of the need for a conscious and explicit housing policy; but beyond the mere satisfaction of these requirements, it is essential that housing policy be

articulated in forms which have meaning to citizens, administrators, and the elected officials involved in plan implementation.

B. Planning for Supply and Cost of Housing

In arriving at zoning decisions cost and supply of housing should be included in planning criteria. Traditional planning has been firmly based in attempts to guide the direction and timing of development and to minimize public expense; the criteria used in such land planning should be broadened to include the social necessity of housing people of all economic levels.

C. Stated Criteria for Zoning

The specific technical or non-technical criteria used in establishing the details of zoning restrictions on development should be stated for each zoning classification in the zoning ordinance. One of the most evasive issues in many zoning disputes is the line separating the protection of public health, safety, morals, and welfare, from matters of personal or communal preference. For instance, single family zones usually establish minimum lot sizes; front, side and rear yard setbacks; and other limitations on development which purport to give the minimum acceptable degree of light, air, and protection from fire. But the criteria used in establishing these restrictions are rarely given and may appear more directly related to the public aesthetic norm than to some technical consideration. When matters requiring technical judgment are the basis of conditions for the use of land, the standards used in determining these conditions should be made explicit. When questions of density, setbacks, and so

forth are not established on the basis of defensible technical considerations, they should be stated as reflections of aesthetic, economic, or other criteria. Removing the mystique of technology from decisions based on non-technical judgments should aid decision-makers and the public in the rational consideration of land use control issues.

D. Expediting Zoning Administration

Efforts should be made to expedite zoning administration both to increase the speed of zoning administration and to relieve the burden placed upon the planning commissions and elected boards. Two possible alternatives to present practice are the Zoning Administrator system and the creation of citizen zoning boards within districts of a jurisdiction. A zoning administrator is a hired professional with power to hold hearings and actually decide upon variances, use permits, and architectural and site approval; the power to grant changes in the zoning map and to grant planned unit developments would remain with the planning commission and elected board. An opposite approach would be to place the responsibility for minor zoning decisions in the hands of lay boards of citizens for designated districts of a jurisdiction. The citizen boards would have essentially the same responsibilities as the Zoning Administrator, with major zoning decisions left to the planning commission and governing body.

E. Mandatory Mix in PUD'S

It should be the policy of each municipality to require a mix in the type and cost of housing units in new subdivisions and apartment complexes as a prerequisite to the granting of planned unit developments. The determination of the degree of mix is a matter for each jurisdiction to decide and will depend upon the circumstances of the individual development proposals. Some jurisdictions may require that subsidized housing for low income families be incorporated into each residential PUD. Developers can be granted special concessions in the development of the project in return for the degree of mix agreed upon. With imaginative design and planning, such mandatory mix may prove one of the best hopes for community economic integration. Ability to make economic mix a condition of the granting of a PUD will probably require specific state enabling legislation.

F. Countywide Collection and Unification of Information

An on-going system for assembling and dispersing housing and zoning information for the entire County and for reasonable sub-areas of the County should be established. Under current conditions, establishment of housing policy and the review of zoning disputes by the courts are both seriously hindered by the lack of an on-going, systematic source of essential information. Zoning maps and symbols are not consistent between cities; and there is no unified set of maps showing the overall zoning pattern of the County. Persons needing housing or land use related information have no general information source to consult.

II. The State Level

A. Statement of Non-exclusion

The State planning law should be amended to include a statement that zoning shall not be used in ways which exclude persons on the basis of race, color, creed, national origin, age, or income.

B. Enforcement of Zoning Equality

The Department of Housing and Community Development (H&CD) of the State of California should be charged with the enforcement of state policies on non-exclusion in zoning. H&CD should be the official state clearing-house for complaints against local zoning that acts to hinder equality of residential opportunity; it should give legal assistance to persons wishing to contest local exclusionary zoning through the courts; and it should work with the State Attorney General's office to directly take legal action in cases of zoning exclusion.

C. Zoning and Housing Cost

State legislation should be amended to allow explicit consideration of housing cost and/or income of occupants in zoning matters consistent with the prohibition of exclusionary zoning practice. In order for zoning to better meet the needs of low and moderate income residents, it must have the ability to specifically consider low and moderate income housing as a criteria for decision making. Under present practice, zoning decisions may not be based on consideration of housing cost.

D. Relationship of Zoning to the General Plan

Under California's existing planning law, there are no specified relationships between the general plan and the zoning ordinance. The law should be changed to require that the zoning ordinance demonstrate substantial compliance to the housing element of the general plan for the city or County. Zoning should be tied to the housing element requirement of adequate provision for the housing needs of all economic segments of the community. Precedent for such legislation has been established by the present state requirement that zoning comply with the provisions of the open space plan of each city or county.

E. Land for Housing as a Basis for Zoning

Consistent with the stated objectives of the Housing Element requirement, the state planning law should be amended to include the designation of land by cities and counties for the adequate housing of all economic groups as one of the basic purposes of zoning. There is a need to explicitly recognize zoning's relation to housing availability and cost in order to insure that zoning be exercised with a conscious eye toward the provision of housing at appropriate costs for families of all economic levels.

F. State Model Land Use Control Ordinance

The state should establish a broadly based commission to review established zoning practices for the purpose of creating a model land use control ordinance for use by local governments in the State of California. Procedures, practices, and land use

policies designed to increase flexibility, overcome administrative delays, and reduce economic segregation should be explored. The commission should investigate the possibilities of more powerful alternatives to present forms of zoning including compensatory forms of land use control. Once such an ordinance is agreed upon, steps should be taken to promote its adoption by local jurisdictions.

G. Consideration of Extra-Territorial Effects

State planning law should be amended so that jurisdictions exercising the power to zone must consider the extra-territorial effects of the zoning restrictions which they impose. Zoning can adversely affect residents of other communities, and it is essential that the power to zone be accompanied by a responsibility to all those who may be effected by its use.

III. The Federal Level

A. Mix Policy in Federally Aided Housing

There should be an aggressive policy promoting economic mix in federally insured and federally assisted housing. The Department of Housing and Urban Development, through the FHA, assists a large proportion of the housing construction in the nation, especially through the mortgage insurance program. Traditionally, FHA insured loans have been made on market criteria reflecting the national bias toward economic and ethnic segregation. FHA has been notoriously hesitant to insure experimental or innovative housing schemes except on a "demonstration" basis with special HUD projects. FHA is now charged with adopting

a greater social consciousness and has agreed to insure loans in areas which had previously been considered poor risks. There is still a need for an actively pursued policy encouraging mix in housing type and price in new residential areas. Encouragement of residential mix by FHA would greatly assist local actions designed to promote such mix.

B. Grants in Aid for Land Rights and Acquisition

The federal government should initiate a program of grants in aid to assist local governments in the acquisition of land development rights through compensatory development controls and for assistance in the establishment of land banks for low and moderate cost housing.

C. Enforcement of Zoning Equality

The Department of Housing and Urban Development should assume responsibility for enforcing equality of treatment under zoning by establishing a policy of legal action against local jurisdictions with zoning which inhibits the realization of federal programs. Secretary Romney sent legislation to Congress proposing that no local government "shall in the exercise of powers with respect to planning, zoning, subdivision controls, building codes, or permits, or other matters affecting land use for areas that are undeveloped or predominantly undeveloped but that are in the path of development, prevent the reasonable provision in such areas of low and moderate income housing eligible for federal assistance in a manner inconsistent with any state or local comprehensive or master plan for such areas." In the case of violation of the provision of the bill, the U.S.

Attorney General could bring suit in the appropriate U.S. District Court, and persons entitled to benefits under the federally assisted housing programs could bring suit in federal or state courts. The bill was defeated. Efforts should be made to reintroduce the bill and broaden it to include the establishment of sections in each area office of HUD to handle zoning complaints consistent with such federal legislation, and to assist individuals wishing to bring suit independent of the Attorney General's office.

RECOMMENDATIONS TO COUNTER EXCLUSIONARY TENDENCIES IN ZONING

At the heart of the issue of exclusionary zoning are racial, ethnic, and economic prejudices. Equalization of opportunity for participation in the housing market and elimination of poverty are central to the reversal of exclusionary zoning practices. In addition to these primary social issues, several factors contributing to exclusionary zoning tendencies can be identified and discouraged.

I. Tax Relief for Local Government

Property taxes should be reduced and the burden for municipal and school support shifted to non-housing related sources. The prime motivations for the fiscal aspects of zoning are the poverty of local governments and their overdependence upon local property taxation. The strengthening of municipal fiscal positions and a shift from property tax to other revenue sources would remove the most tangible point of local opposition to low cost housing. With or without unification of school districts, tax monies for school support should be collected on a statewide basis and redistributed on a per-student

basis. A redistribution of funds from both state and federal levels should be strongly encouraged and alternative forms of taxation explored.

II. Reducing Emphasis on Neighborhood Homogeneity

Planning practice and zoning patterns should reverse the traditional emphasis on creating and maintaining homogeneous neighborhoods. The concept of neighborhood homogeneity was articulated early in the century and was a fair reflection of the racial and economic attitudes of the time. Planners, tax assessors, developers, and others combined to enforce the creation of neighborhoods with little variety in lot sizes, house style, income composition, racial makeup, or almost any other readily observable characteristic. At the center of the idealized homogeneous neighborhood has been the neighborhood school. Such homogeneity within local neighborhoods pre-supposes segregation by income, education, race, and ethnic group; and its acceptance as a municipal objective has greatly added to the attitudes behind exclusionary zoning. Zoning has been a tool in the creation of such uniform neighborhoods through its use to establish large areas with uniform lot sizes, side yards, setbacks, and other characteristics. If a wider availability of low and moderate income housing is to be achieved, it is essential that steps be taken to broaden the base of economic and ethnic composition in individual neighborhoods and in entire communities. Several types of action are needed.

A. Neighborhood Mix in Local Planning

Local jurisdictions should consciously designate a variety of zoned areas so that economic mix will be fostered both between adjoining subdivisions and apartment complexes and within each subdivision and

apartment complex. Once an area has been established, there is relatively little that zoning can do to increase population mix without creating legitimate concern over neighborhood stability. But there is great flexibility in what zoning can encourage in newly developing areas, especially in areas developing with large subdivisions or apartment complexes. A greater mix of lot sizes and housing types should be pursued as a prerequisite to residential development. A mix in multi-family densities and type should be fostered with apartments encouraged to locate in areas with a residential character rather than being confined to buffering zones between single family houses and commercial uses.

B. Relationship of Schools to Housing Development

The concept of the neighborhood school should be re-examined in terms of its influence in reinforcing or sustaining segregated housing patterns. The neighborhood school has come under concerted criticism by groups seeking racial and ethnic integration because it forces school enrollment into the often segregated patterns of residential location. Residential patterns and school patterns may be viewed as both inter-related and self-reinforcing. Where neighborhood homogeneity prevails, the neighborhood school reinforces racial, ethnic and economic segregation. The most commonly voiced objection to lower income housing developments is, in fact, based on the neighborhood school. Residents accustomed to homogeneous neighborhoods and segregated schools often fear that the introduction of low cost housing into the area served by their school will somehow lower the quality of education offered by the school. Where neighborhood mix exists or can be created in new

housing developments the neighborhood school may be a worthwhile concept serving a valuable function. But where segregated economic, ethnic, or racial patterns of housing exist a change to some larger geographic area of school attendance should be considered.

FOOTNOTES

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3. President's Committee on Urban Housing, A Decent Home (Washington, D.C., U.S. Government Printing Office, 1969), p. 142.
4. National Commission on Urban Problems, op. cit., p. 214.
5. Vance Packard, The Status Seekers, (New York, Pocket Books, Inc., 1961), pp. 68-80.
6. Mary Brooks, Exclusionary Zoning, (Chicago, Illinois, American Society of Planning Officials, 1969), p. 11.
7. Ibid.
8. Appeal of Joseph Girsh from the Decision of the Board of Adjustment of Nether Providence Township, Delaware County, before the Supreme Court of Pennsylvania, Eastern District, No. 164, January Term, 1969.
9. National Commission on Urban Problems, op. cit., p. 216.
10. National Commission on Urban Problems, op. cit., pp. 211-212.
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SURVEYS AND QUESTIONNAIRES

- Association of Bay Area Governments, Survey of Zoning and Subdivision Ordinances, July 1969.
- Joint Cities-County Housing Element Program, Zoning Questionnaire, January 1970.

APPENDIX

Suggestions to Supplement Present Zoning

The ideas presented in this appendix are intended as suggestions only.

In considering the influences of zoning, it became apparent that zoning was too blunt an instrument to be truly effective in the promotion of low and moderate income housing. It was found that zoning conducive to low and moderate income housing was necessary for the development of such housing but that zoning was not sufficient to insure the provision of low or moderate income housing. The following ideas might serve to supplement or augment present zoning and make it a more refined tool for effectuating housing policies. Most of these suggestions have been previously proposed by agencies or groups concerned with housing, or at housing conferences. Before any action on these suggestions can be contemplated, they will need serious examination and discussion.

1. Land Banking for Housing

Local communities may decide to create land banks for low and moderate income housing. Sites for future subsidized housing developments could be assembled, and sites could be purchased to facilitate the creation of scattered public housing units. In addition, private non-profit housing corporations with land banking functions could be encouraged and assisted by local communities.

2. Compensation and Value-added Taxation

Zoning actions influence the market value of land, and may either make a landowner's property more valuable or less valuable depending upon the situation. There have been a number of suggestions over the years to tie land use control to this gain or loss of land value. When land

use controls lower the market value of land, it is argued that the government should make compensation to the property owners for the amount of loss in property value. With government making such compensation, land use controls could be made much stronger than current zoning; land could be specifically earmarked for low or moderate income housing without the necessity to buy the property outright. On the other hand, property owners would be taxed for the amount of any value added to the property through zoning actions. If, for example, a developer obtained a change in zone from single-family use to multi-family use, he would have to pay the government for the increment in land value associated with the zone change. The money collected from this "value-added" tax on properties gaining value would help pay for the cost of making compensation on property decreased in value through land use controls. Compensation in land use control and the use of the value-added tax could operate independently of each other but are usually considered as complementary actions. In practice there are great difficulties in administering both compensation and value-added taxation, and no really adequate system for the two has been perfected. But short of a major change in the legal framework surrounding property rights, compensatory land use control appears to be a promising mechanism for refining government's control over development of land.

3. Conditioning Housing Cost in Zoning

Mechanisms and procedures capable of effectuating economic mix within zone districts should be developed. Once an area is zoned for a particular use classification, there is little that a community presently can do to further influence the cost of development which will occur within that zone. There is a need for some mechanism analogous to present

architectural and site approval procedures to control the cost of housing within certain specified zone classifications. It may be possible that the issuance of building permits could be conditioned upon the fulfillment of a requirement for economic mix or provision of low moderate cost housing. Other avenues of implementation should be explored.

4. Townhouse Zone

Single-family-attached, or "townhouse" zones, should be considered for use where appropriate in the cities and unincorporated areas. Although considerable activity in townhouses has taken place, developers have voiced a desire for a special zoning category where the rules of the game are more clearly defined than the demands which may be placed upon them under planned unit developments. In view of the growing importance of townhouse projects, it would be desirable to have a specific zone detailing specific development requirements. Such a zone would also give residents of an area fair notice as to the type of development which may take place.

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